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Summary record of the 6th meeting
Held at Headquarters, New York, on Monday, 19 October 1998, at 3 p.m.

Chairman: Mr. Enkhsaikhan ..... (Mongolia)

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Agenda item 154: Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization (*continued*)

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98-81723 (E)

The meeting was called to order at 3.15 p.m.

Agenda item 154: Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization (*continued*) (A/53/33, 312, 326 and 386)

1. **Mr. Yel'chenko** (Ukraine) said that he considered the Special Committee to be the most appropriate forum for consideration of the legal aspects of the revitalization and reform of the Organization, where it could make a contribution. It would need to do more to streamline its methods of work and in that connection he fully supported its recommendation to move its future sessions to the spring, which would allow enough time for delegations not only to analyse thoroughly the results of the General Assembly deliberations of the Sixth Committee and other United Nations bodies but also to draft proposals and assess in time the proposals and documentation from delegations and the Secretariat. Any such proposals and documents ought to be submitted well in advance, at least a month before its session started, if the Special Committee was to consider them. Moreover, coordination with other United Nations bodies was essential, especially in order to avoid duplication. There should be informal contacts with the secretariats and most active delegations of other bodies, and their representatives and those of other Secretariat units should be invited to keep the Special Committee informed of their activities.

2. During its 1998 session, the Special Committee had considered proposals that had been on its agenda for some time. Given the conflicting views among delegations and even the lack of interest in prolonging the discussion on the issues, it had made no recommendations. At the same time, the Special Committee had not seemed to want to drop consideration of them. Ukraine believed that they should be kept in the Special Committee's programme of work but that consideration should be deferred for two or three sessions to give the delegations time to reconsider their positions or come up with new proposals that might revive the debate.

3. With regard to the working paper submitted by the Russian Federation entitled "Some ideas on the basic conditions and criteria for imposing and implementing sanctions and other enforcement measures", his delegation believed that the Special Committee was the body that should deal with the question. The discussion at the latest session had been encouraging, and a paragraph-by-paragraph first reading of the proposal should be completed at the next session.

4. The revised working paper submitted by Cuba (A/AC.182/L.93/Add.1) provided an interesting legal framework for discussion by raising the issues of the functions and powers of the General Assembly under the Charter, especially Chapter IV, and the need to ensure a better balance of power between the Security Council and the General Assembly. Thinking along those lines should be pursued, and the sponsor should consider preparing further documentation on the matter.

5. Ukraine attached particular importance to the implementation of the provisions of Chapter VII of the Charter regarding assistance to third States affected by sanctions. In addition to the résumé of the Special Committee's discussion of the problem, the Committee had before it an excellent summary of the deliberations and main findings of the ad hoc expert group meeting on the question of developing a methodology for assessing the consequences incurred by third States as a result of preventive or enforcement measures and on exploring innovative and practical measures of international assistance to the affected third States, contained in the report of the Secretary-General (A/53/312). However, it was hard to understand why it took so long for the Secretariat to distribute a completed document to members so that they could consult their Governments and receive instructions well before the beginning of the Sixth Committee's debate.

6. With regard to Article 50, he reiterated his country's position that sanctions against any State resulted in economic losses for its neighbours and trade partners. There was no doubt that the maintenance of peace and security and the observance of human rights might require sacrifices on the part of the international community or particular States. That was why Ukraine was ready to bear its own share of the common burden. Nevertheless, it considered it unfair that some States should suffer while others, equally involved in the application of a sanctions regime, should not only experience no untoward economic consequences but even profit from the isolation of their competitors. The Security Council imposed sanctions on behalf of the entire Organization, and all Member States should bear equal responsibility for their implementation and repercussions. Specific proposals should therefore be drawn up and acted upon to remove the inadequacies of the sanctions regime and set up a system of fair distribution of the economic damage caused by sanctions.

7. It was particularly encouraging that in its deliberations the ad hoc expert group had proceeded from the same assumption, noting (A/53/312, para. 37) that the cost of implementing sanctions should be viewed as the opportunity cost of a possible alternative to an international military

action or a peacekeeping operation. Since the costs of such military or peacekeeping operations were internationally shared in the form of contributions, the costs of economic sanctions should similarly be borne on a more equitable basis, bearing in mind the special responsibility of the major industrialized countries in that regard. The idea suggested to that end by the expert group, of applying funding procedures similar to those used for peacekeeping operations (ibid., para. 46), deserved to be put into effect after detailed study.

8. Ukraine shared the view of delegations which believed that sanctions should not be a substitute for the established, recognized procedures for settling international disputes. The imposition of sanctions should follow, not precede, the peaceful means of settlement, when the latter were unsuccessful, in accordance with international law and in the Charter of the United Nations.

9. There was no alternative to a thorough, realistic and pragmatic examination of the third State problem both within and outside the United Nations system. The attempt to address the issue solely on the basis of a literal interpretation of the term "consult" in Article 50, or to assign to institutions outside the United Nations system exclusive responsibility for assisting third States would not only make the provisions of that article inoperative, but would also undermine the ends pursued by sanctions, as well as the principle of their strict observance. One could not but note in that connection the understanding reached by the Ad Hoc Expert Group that the imposition of comprehensive sanctions would require broad-based international action involving international financial and trade institutions, the development programmes and specialized agencies of the United Nations and other relevant and international and regional organizations. His delegation also fully endorsed the idea that in order to address special economic difficulties in third States more specifically and directly, IMF and the World Bank should consider establishing a special mechanism which would allow them to mobilize new and additional financial resources in order to provide, on exceptional and concessional terms, emergency financial assistance that would go above and beyond the traditional interventions on account of macroeconomic imbalances or structural adjustment programmes.

10. Recognition of the problems of third States was not sufficient. The whole work on the implementation of the relevant General Assembly resolutions must not be confined to measures aimed at enhancing the effectiveness of Secretariat activities or elaborating a uniform methodology for assessing the losses of third States. It was essential to set up a permanent and reliable legal mechanism for addressing those issues, a mechanism which would be able to take up, automatically and without delay, a particular problem related to the implementation of Article 50. His delegation believed that effective and prompt measures taken under Article 50 would be essential if the overall effectiveness of sanctions was to be guaranteed and the authority of the Security Council under Charter VII preserved.

11. Ukraine attached great importance to the creation of a mechanism for consultations between the Security Council and countries which were or might be affected by the implementation of sanctions; that idea had been reflected in the conclusions of the Ad Hoc Group of Experts. Another reasonable proposal was the idea of creating a standing committee of the Security Council on sanctions which would carry out its functions with transparency and would be responsible for assessing the economic and sociopolitical effects of sanctions, coordinating appropriate activities within the United Nations Secretariat, monitoring the observance of sanctions regimes, estimating current and future losses of third States and determining ways of minimizing them. The creation of such a Committee could and should be supplemented by appointing, as was strongly recommended by the Ad Hoc Group of Experts in paragraph 54 of its report (A/53/312), a Special Representative of the Secretary-General to undertake, in the most severe cases, a full assessment of the actual consequences for affected third States for carrying out of sanctions.

12. The work of the Expert Group was commendable for a number of reasons. Its results had permitted the conclusion that there existed a sufficient number of methods and means to properly assess the losses caused to third States by sanctions and that there were specific and realistic ways of providing practical assistance to such States, *inter alia* to avoid unjustified losses. What was needed now was the political will to start the process of their practical application.

13. His delegation intended to submit, together with the delegations of Bulgaria and Russian Federation, a draft resolution which could be discussed within the framework of a working group of the Sixth Committee. The establishment of such a group would also be useful for the purpose of studying the results of the Ad Hoc Expert Group meeting in an appropriate substantive manner, as recommended by the Special Committee.

14. **Mr. Troyjo** (Brazil) recalled that at its last session, the Special Committee had considered three main issues: the maintenance of international peace and security, the peaceful settlement of disputes, and the situation of the Trusteeship Council. With regard to the issue of assisting third States

affected by sanctions, which had figured on the agenda of the Special Committee for a number of years, Brazil had always maintained that sanctions should be contemplated only as a last resort, when diplomatic efforts had been exhausted. That being the case, it was in favour of multilateral efforts aimed at avoiding or minimalizing the adverse impact of sanctions on third States.

15. With regard to the draft declaration on the basic principles and criteria for the work of United Nations peacekeeping missions and mechanisms, his delegation saw it as a document that was all the more useful in that peacekeeping operations were becoming increasingly complex and diversified.

16. His delegation wished to congratulate the Russian delegation on the important dimension assigned to the principles of humanitarian law in the working paper it had submitted. Similarly, his delegation welcomed the revised proposal by Sierra Leone, in the belief that the proposed mechanism would make a positive addition to the range of the Organization's preventive diplomacy activities. It was now the task of the Special Committee to revise and perfect the text.

17. His delegation believed that the proposals concerning the International Court of Justice should be examined in depth, and that it would be important for the international community to extend its codification efforts further in order to devise the necessary legal basis to deal with the interaction between States and international organizations.

18. With regard to the situation of the Trusteeship Council, his delegation had already expressed on a number of occasions its reservations regarding the proposal that the Council should be given a collective mandate over the global commons. Given that a number of bodies were already dealing with the global commons, Brazil saw no advantage in assigning that role to the Trusteeship Council, which would then be duplicating the work of many existing institutional mechanisms.

19. **Mr. Tchatchouwo** (Cameroon) said that his delegation attached great importance to the question of assistance to third States affected by sanctions and called for a strict implementation of the relevant provisions of the Charter, especially Article 50. Sanctions should not be imposed unless the peaceful means provided for in the Charter had proved ineffective. Moreover, they should be resorted to only to achieve precise objectives. The measures which the target State must take in order to have the sanctions lifted should be spelt out clearly.

20. In conformity with its humanitarian ideal, his Government considered that the human dimension, especially the social, economic and cultural rights of the people, should be taken into account whenever sanctions were imposed. His delegation therefore supported the Secretary-General's idea of establishing a mechanism which would make sanctions less brutal. It also endorsed the recommendations of the ad hoc group of experts contained in document A/53/312. It believed that the Sierra Leonian proposal on a dispute prevention and early settlement service deserved further study.

21. A decision on the proposal relating to the Trusteeship Council would be premature.

22. His delegation supported the recommendation to hold sessions of the Special Committee during the first six months of the year.

23. It was extremely important that the International Court of Justice should have the necessary means to perform its functions rapidly and effectively, despite the increase in the number of cases brought before it.

24. **Mr. Sergiwa** (Libyan Arab Jamahiriya) said that his delegation had read the report of the Special Committee giving particular attention to the question of assistance to third States affected by sanctions. It felt that the work done by the Special Committee on that subject was unfinished inasmuch as it had dealt with the consequences of sanctions without exploring the cause, namely how sanctions came to be imposed through imperfections in the Charter which enabled certain Member States to manipulate the deliberations of the Security Council and to interpret the provisions of the Charter to their advantage. It was thus that the Libyan Arab Jamahiriya had endured sanctions for more than six years. As a result it had suffered economic losses of several billions of dollars and seen development efforts halted. The sanctions in question were altogether unjust as they had been taken under Chapter VII of the Charter, which provided for such action only with respect to threats to the peace, breaches of the peace, and acts of aggression.

25. His delegation fully supported the working paper prepared by the Russian Federation. Sanctions must be an exceptional means that was to be used only after all other means had failed and only in cases where the Security Council saw a threat to international peace and security or an act of aggression. Care must be taken to ensure that sanctions did not harm civilian populations, especially children, and did not remain in place indefinitely.

26. His delegation was in favour of the working paper submitted by Cuba, which offered some useful proposals

designed to restore the balance between the General Assembly and the Security Council in the area of international peace and security. The proposal of Sierra Leone also had merit.

27. Moreover, his delegation supported the proposals made with respect to the International Court of Justice, which should be endowed with the human and material resources it required in order to handle a growing caseload.

28. On the subject of the organization of the Special Committee's work, his delegation favoured a spring session but was against shortening the duration of the session.

29. Committed to strengthening the role of the United Nations in the maintenance of international peace and security, his delegation had submitted a number of proposals to the Special Committee, the last of which was reproduced in paragraph 98 of the report and consisted of the following six elements: (i) considering ways of bolstering the role of the General Assembly in the maintenance of international peace and security; (ii) considering ways of enhancing the relationship between the General Assembly and the Security Council; (iii) considering the adverse consequences of the veto and redefining the conditions of its use; (iv) elaborating criteria to ensure that the composition of the Council was truly representative and reflected the principle of equitable geographical distribution; (v) formulating a precise definition of what constituted a threat to international peace and security so as to preclude improper resort to action under Chapter VII; (vi) reviewing the implementation of Article 31 of the Charter, which ensured the right of any Member to participate without a vote in the Council's discussions whenever the interests of that Member were affected. In conclusion, he expressed the hope that the Special Committee would study that proposal closely at its next session.

30. **Mr. Akbar** (Pakistan) said that the international community was becoming increasingly aware of the impact of mandatory sanctions on third States. It appreciated the fact that the Secretary-General, in pursuance of his own proposal and General Assembly resolution 52/162, had convened a group of ad hoc experts to develop a methodology of assessing the consequences incurred by third States as a result of preventive or enforcement measures and to explore innovative and practical measures of international assistance to those States. The report of the Secretary-General (A/53/312) contained a summary of the deliberations and main findings of the expert group. The contents of the report deserved further consideration by the Sixth Committee and the Special Committee on the Charter with a view to their conducting an extensive analysis of the work done by the expert group and looking into ways of facilitating the application of its recommendations. His delegation would give its detailed views on the subject during the consideration of the report. It would be advisable for Member States to take a close look at the following technical elements of the methodology for assessing the impact of sanctions on third States: time series analysis of balance-of-payments changes, stratified sample survey of firms, gravity model of bilateral trade flows, regression equation of income shocks, and analytic hierarchy process for perception surveys. Those techniques and mathematical models required extensive collection of data and hence presumed an advanced system. Prompt relief should be offered to the countries affected by sanctions, which were frequently not in a position to collect the data concerned. The Sixth Committee would note that the expert group had not established a mechanism or a fund to help third States cope with their problems. That gap had to be filled.

31. The Secretariat might consider the feasibility of a structure capable of expeditiously enacting the more realistic recommendations: (i) the Secretariat could draw up a tentative list of potential effects of sanctions on third States; (ii) the Secretary-General could submit to the Security Council as soon as possible an assessment of the potential impact of sanctions on the target countries and in particular on third States; (iii) the Secretariat should monitor the effects of sanctions and report its findings to the Security Council; (iv) the Secretariat should help the affected States to prepare explanatory materials for attachment to their requests for consultation with the Security Council; (v) the Secretary-General should appoint a Special Representative to undertake, in collaboration with the Governments concerned, a full assessment of the consequences actually incurred by the most severely affected States; (vi) the dispatch to the most affected third States of special fact-finding or evaluation missions which would ascertain their urgent needs and particular requirements for international support; (vii) the Special Representative's functions could include coordination of the follow-up activities to assist the affected countries or regions.

32. The expert group had recognized the unforeseen effects of sanctions and their negative implications for expatriate labour working in third States. The phenomenon was particularly harmful for the low-income developing countries most affected by the loss of remittances and the rise in unemployment. It was therefore essential to find a way to compensate third States for the losses that they incurred.

33. His delegation greatly appreciated the initiative of the Russian Federation in evolving criteria for imposing

mandatory sanctions and other enforcement measures. It fully shared the view that social, economic and cultural rights should be taken into account when designing a sanctions regime. General Assembly resolution 51/242 affirmed that the concept of "humanitarian limits of sanctions" merited further attention. The United Nations should not become a punitive organ and the Security Council should not resort to sanctions without first exhausting all other means of resolving disputes. The Council should make fully informed decisions based on an assessment of the situation on the ground and contacts with the parties concerned. Sanctions should be time-limited, with clearly stipulated conditions for lifting them.

34. Pakistan had been in the vanguard of Member States that had substantively contributed to United Nations peacekeeping operations. His delegation had studied the proposal of the Russian Federation on evolving criteria for peacekeeping missions, which were purpose-specific and should not be time-limited. There was no objection to the Special Committee discussing the criteria, but its work should not duplicate that of the Special Committee on Peacekeeping Operations.

35. His delegation fully appreciated the thrust of the Cuban proposal on strengthening the role of the Organization. It was essential, however, to detach those elements of the proposal that were under discussion in the Open-ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council and Other Matters Related to the Security Council. The proposal of the Libyan Arab Jamahiriya was a commendable approach to strengthening the role of the General Assembly in the maintenance of international peace and security. The Committee could continue to reflect on the issue at its next session.

36. With regard to the peaceful settlement of disputes between States, the Special Committee had been discussing the proposal submitted by Sierra Leone, entitled "Establishment of a Dispute Prevention and Early Settlement Service". His delegation believed, however, that the service should not be manned by gratis personnel. Indeed, the General Assembly had decided to phase out all gratis personnel by February 1999.

37. The Special Committee was seized of two proposals regarding the International Court of Justice: one concerned the impact of the increase in the number of cases considered on the work of the Court and the other related to extending the Court's competence to disputes between States and international organizations. The Court had submitted comments and observations on the first issue, which would be useful in dealing with the two proposals. The difficulties caused by the budgetary constraints faced by the Court should be emphasized. It was essential that it should have sufficient financial and logistical support to carry out its work.

38. With regard to the Secretary-General's report on the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council* (A/53/386), the Secretariat should arrange for the placement of the documents on the World Wide Web, so that the growing number of individuals with access to it could benefit from them.

39. The Special Committee had once again noted conflicting views concerning the Trusteeship Council. His delegation believed that the Council should continue to function as one of the six principal organs of the United Nations. The General Assembly might hold detailed discussions to specify clearly the areas of the Council's activities in the future, in conformity with the principles established in the Charter of the United Nations.

40. **Mr. Smejkal** (Czech Republic) said that he need not discuss certain issues covered the previous week by the Austrian delegation, speaking on behalf of the European Union, namely the implementation of provisions of the Charter related to assistance to third States affected by the application of sanctions, the consequences that the increase in the volume of cases before the International Court of Justice had on the operation of the Court or the progress report on the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council*. His delegation was among those which had aligned themselves with the positions set forth by the Austrian delegation on behalf of the European Union.

41. With regard to the peaceful settlement of disputes between States, his delegation had appreciated the frankness of the discussions following the submission of the proposal on the establishment of a dispute prevention and early settlement service. Unfortunately, the Working Group of the Whole had not made much progress with the consideration of the text itself, although the draft had been on the Special Committee's agenda for several years and its members ought to be familiar enough with the main ideas put forward. Moreover, at previous sessions some delegations, including his own, had expressed doubts concerning its applicability, whether administratively, financially or otherwise. At the current session the Special Committee had wanted to press on with consideration of the draft. The proposed mechanism was indeed interesting and innovative, but it would be preferable to restructure the text of the proposal in the form

of a draft legal instrument which could be submitted to the Special Committee.

42. With regard to the working methods and role of the Special Committee, his delegation was among those which had believed, two or three years earlier, that the time had come to reflect on how to reorganize the Special Committee's work so that it could be better integrated into the Organization's reform process. Although by no means negligible, the obstacles had not seemed insurmountable. With the passage of several years, his delegation had considerably more reservations in that regard, particularly since the Open-ended High-level Working Group on the Strengthening of the United Nations System which could have worked with the Special Committee had been disbanded. In other areas relating to reform of the Organization, it was far less realistic to count on the constructive participation of the Special Committee, particularly in relation to anything concerned with the Security Council, given the political dimension of the problems addressed by the Counci' Other proposals regarding the maintenance of international peace and security submitted to the Special Committee provided food for thought and could give rise to interesting discussions, but his delegation felt that a body such as the Special Committee should undertake work that could produce practical results.

43. The work of the Special Committee on Peacekeeping Operations had also already been examined in other United Nations bodies and the resulting duplication was, to say the least, regrettable. The same went for the current debate on the Trusteeship Council. His delegation could only reiterate its view that there was no need to come to any hasty decisions on either issue. It was true that the Council was not currently engaged in any activities, but that situation could change. Moreover, it would be impractical to establish a new body with responsibility for the common heritage of mankind, given that other bodies were already active in the field.

44. His delegation thought that any consideration of the Special Committee's methods of work should begin with a study of ways and means of bringing its agenda up to date. The Special Committee itself was best placed to carry out such a task. The Special Committee should also hold slightly shorter sessions, thereby giving a new impetus to its work and refocusing it on issues on which its efforts could lead to specific results in the short term and to which it should therefore give priority. Paragraphs 160–165 of the Special Committee's report contained some interesting reflections on the matter. His delegation was wholly in favour of pursuing the course of action there outlined.

45. **Mr. Haryono** (Indonesia), referring to the implementation of provisions of the Charter related to assistance to third States affected by the application of sanctions, said that the Non-Aligned Movement considered the imposition of sanctions a matter of serious concern which should be considered only after all means of pacific settlement of disputes under Chapter VI of the Charter of the United Nations had been exhausted and a thorough consideration undertaken of the long- and short-term effects of such sanctions. Since the application of sanctions had increased considerably in recent times, it was important that the potential impact on a targeted country, as well as the time-frame, clearly defined objectives, the humanitarian aspects and special provisions to minimize the collateral damage suffered by third States should be clarified beforehand. It was clear from the provisions of Article 50 of the Charter that concrete steps should be taken to alleviate the hardship of third States adversely affected by sanctions. It was in that context that the Non-Aligned Movement had underscored the need to put Article 50 into effect, particularly by establishing a mechanism, including a fund, to provide relief to third countries affected by sanctions.

46. The Secretary-General's report on the topic (A/53/312) had touched upon some interesting proposals arising from the meeting of the expert group, particularly the development of a methodology for assessing the impact on third States of the imposition of sanctions and the exploration of innovative and practical measures of international assistance. The proposal to draw up a tentative list of potential effects of sanctions also had considerable merit, provided that it contained all the relevant facts concerning the effect of sanctions on the third State. At the same time, before the decision to impose sanctions was made, the Secretary-General should submit an assessment of their potential impact on third States. An appraisal by the Security Council, including prior studies of the economies to be affected, would also be helpful, together with a consideration of the concerns of third States most likely to be affected. In order to facilitate technical assistance to States invoking Article 50, the preparation by the Secretariat of materials attached to requests seeking consultations with the Security Council would be useful. So too would be the appointment of a Special Representative of the Secretary-General in the most serious cases. The establishment by such a Special Representative of an inter-agency arrangement or task force consisting of various sub-groups would assist in alleviating the negative impact of sanctions in the economic, trade and financial areas. Fact-finding missions, with the consent of the States concerned, would be important in

evaluating the full range of adverse effects and economic damage suffered by third States.

47. The working paper submitted by the Russian Federation, entitled "Some ideas on the basic conditions and criteria for imposing and implementing sanctions and other enforcement measures" (A/AC.182/L.94) constituted yet another basis for further deliberations. The working paper entitled "Basic conditions and criteria for the introduction of sanctions and other coercive measures and their implementation" (A/AC.182/L.100) offered further guidance on the imposition, implementation and lifting of sanctions.

48. His delegation viewed the working paper entitled "Fundamentals of the legal basis for United Nations peacekeeping operations in the context of Chapter VI of the Charter of the United Nations", submitted by the Russian Federation, as a timely initiative aimed at providing a legal framework for the peacekeeping activities of the Organization (A/AC.182/L.89/Add.2 and Corr.1). It was particularly appropriate, since peacekeeping operations, though declining in numbers, had vastly expanded in scope. Furthermore, the working paper contained some of the basic principles for the implementation of peacekeeping activities, including impartiality, non-interference in the internal affairs of the parties to the conflict, consent, and non-use of force. Those principles had also been enunciated in the final document adopted by the Eleventh Ministerial Conference of the Movement of Non-Aligned Countries, held in Cairo in 1994, and remained as true as they had been then.

49. His delegation had taken note of the revised working paper submitted by Cuba at the 1997 session of the Special Committee, entitled "Strengthening the role of the Organization and enhancing its effectiveness", and of the additional working paper before the current session under the same title (A/AC.182/L.93 and Add.1), which contained some interesting ideas about the reform of the United Nations, especially its legal aspects. The working papers could make a valuable contribution to the ongoing endeavours in other United Nations forums. The issue of reform and revitalization of the General Assembly and the Security Council, particularly the legal elements, fell within the mandate of the Special Committee, whose endeavours complemented the work of other bodies and thereby ensured the effective functioning of United Nations organs.

50. His delegation had also noted the revised proposal submitted by the Libyan Arab Jamahiriya with a view to strengthening the role of the United Nations in the maintenance of international peace and security (A/AC.182/L.99), elements of which merited further consideration.

51. The strengthening of the General Assembly was particularly important in view of the challenges of the next millennium. Equally crucial was the reform of the Security Council so as to reflect contemporary realities and to accommodate the interests and concerns of the developing nations which comprised the overwhelming majority of the Organization.

52. The recommendation by the Special Committee that its future sessions should be scheduled in the middle of the year was practical, since it would give Member States more time to consider the report of the Sixth Committee and other relevant reports.

53. **The Chairman** said he had taken note of the proposal that a Sixth Committee working group should be established on Article 50 of the Charter relating to the effects of sanctions on third States. In addition, the delegation of Ukraine had put a question to which he invited the Secretary of the Committee to reply.

54. **Mr. Lee** (Secretary of the Committee) recalled that the Ukrainian delegation had asked the Secretariat why various documents, including the report of the Special Committee, had not been distributed earlier. He explained that documents were sent to the Documents Control Section and their processing (editing, translation, printing and distribution) took a certain amount of time. The Section received documents from all Secretariat departments and could not always distribute them in the order in which they had been sent. What it tried to do was to send them out to coincide with the order of meetings. The Committee secretariat had asked the Section to give priority to documents to which delegations needed to give the most urgent attention.

The meeting rose at 4.40 p.m.

United Nations A/C.6/53/SR.7

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Summary record of the 7th meeting
Held at Headquarters, New York, on Tuesday, 20 October 1998, at 10 a.m.

Chairman: Mr. Enkhsaikhan ..... (Mongolia)
later: Mrs. Flores Liera (Vice-Chairman) ..... (Mexico)

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Agenda item 154: Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization (*continued*)

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98-81735 (E)

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The meeting was called to order at 10.20 a.m.

Agenda item 154: Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization (*continued*) (A/53/33, 312, 326 and 386)

1. **Mr. Choe Myong Nam** (Democratic People's Republic of Korea) said that, as pointed out in the Secretary-General's report on implementation of provisions of the Charter related to assistance to third States affected by the application of sanctions (A/53/312), the sanctions applied under Chapter VII of the Charter had many adverse effects on third States, a fact which had long been a cause of concern to the international community. Worse still, most of the victimized States were developing countries. The provision of assistance for such third States was therefore an urgent issue, and the Secretary-General's report contained some encouragement in that regard. However, it said hardly anything about the role of the Security Council in adopting the sanctions, although saying much about the role of the international financial and development organizations. His delegation endorsed the proposals of the Movement of Non-Aligned Countries and many other countries, which included the establishment of a permanent mechanism for the just solution of the problem.

2. The working paper entitled "Some ideas on the basic conditions and criteria for imposing and implementing sanctions and other enforcement measures" (A/53/33, chap. III.B), submitted by the Russian Federation to the Special Committee, made some interesting points. The delegation of the Democratic People's Republic of Korea was opposed to the use of sanctions as the unique means of dispute settlement. Sanctions under Chapter VII should be imposed only as a last resort and in full compliance with the Charter; they must never cause harm to humanitarian and human rights causes in the target States or in third States. Time limits should be set, so that the sanctions could be lifted immediately the objective was realized, and they must never be used indefinitely as a means of changing a country's legitimate political system.

3. The Special Committee should strengthen its coordination with the other bodies dealing with the reform of the United Nations, with a view to avoiding duplication and facilitating the reform debate, which should focus not only on enhancement of the power of the General Assembly and the democratization of the Security Council but also on the correction of the facts of the history of the United Nations. In that connection, the name and flag of the United Nations had been abused by the United States forces masquerading in South Korea as the "United Nations command" since the Korean War in 1950. It was common knowledge that Security Council resolution 84 (1950), claimed by the United States to be the basis for the "United Nations command", was adopted in the absence of one of the Council's permanent members, in violation of Article 27, paragraph 3, of the Charter. That illegally adopted resolution only recommended that all Member States providing military forces and other assistance should "make such forces and other assistance available to a unified command under the United States of America". It did not mention a "United Nations command", which was nothing more than the United States forces in South Korea.

4. **Mr. Rosenstock** (United States), speaking on a point of order, said that the representative of the Democratic People's Republic of Korea should keep to the item under discussion instead of introducing entirely unrelated material at great and offensive length.

5. **Mr. Choe Myong Nam** (Democratic People's Republic of Korea) said that his remarks were connected with the reform of the United Nations. His delegation wished to correct the history of the United Nations, in the interests of the Democratic People's Republic of Korea and of the whole international community.

6. The United States forces masquerading as the "United Nations command" in South Korea had misled public opinion, creating the impression that belligerent relations existed between the Democratic People's Republic of Korea and the United Nations. The United States was abusing the United Nations in pursuit of its political and military strategy in the Korean Peninsula. Such conduct not only contradicted the Charter but also jeopardized the credibility of the United Nations. It should be tolerated no longer. The Sixth Committee and the Special Committee should endeavour to correct the abuse.

7. **Ms. Baykal** (Turkey) said that the ad hoc expert group meeting on developing a methodology for assessing the consequences incurred by third States as a result of preventive or enforcement measures, in which a Turkish expert had participated, had produced commendable results. One particularly important conclusion was that the cost of implementing the sanctions should be viewed as an opportunity cost of an alternative to international military action or a peacekeeping operation. Just as the cost of such actions or operations was shared by the international community, so should the cost of preventive or enforcement measures be borne on a more equitable basis. The time had come to establish a formal mechanism to alleviate the negative effects of sanctions on third States. Such States had

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supported the idea of setting up a working group of the Sixth Committee to study the question, but another group of States had always rejected that idea. It was to be hoped that the valuable work of the ad hoc expert group would in fact be followed up. In that connection the Secretary-General should seek the views of Governments and international financial and trade institutions, as well as of the Economic and Social Council. The Special Committee should then discuss those views at its 1999 session.

8. There was a direct relationship between the effects of sanctions and the proceedings of the Security Council and the sanctions committees. There had been some positive developments in that connection, but the overall results were not satisfactory. Turkey was still suffering from the application of sanctions against Iraq and still experienced difficulties in dealing with the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait. It had submitted an application to that committee with a view to receiving damages as a third State, but had received no reply. It was also important to secure transparency in the work of the Security Council and the sanctions committees, for that would help to mitigate their adverse effects on third States.

9. The papers submitted to the Special Committee by the Russian Federation contained useful ideas. In particular, the proposals on sanctions and other enforcement measures would provide the Security Council with clear and objective criteria. In connection with the revised proposal of Sierra Leone on "Establishment of a Dispute Prevention and Early Settlement Service" (A/53/33, chap. IV.A), the Turkish delegation believed that the consent of the parties to the dispute was needed before the proposed Board of Administrators could deal with a dispute.

10. At its latest session the Special Committee had discussed its working methods, which could certainly be improved: the meetings must start on time and better use must be made of conference services. However, there was no need to shorten the Special Committee's sessions or to limit its agenda to topics mandated by the General Assembly.

11. **Mr. Kawamura** (Japan) said that the question of the implementation of Charter provisions related to assistance to third States affected by sanctions must be dealt with effectively and expeditiously. For example, a methodology must be developed for assessing the consequences suffered by third States. In that connection the work of the ad hoc expert group was welcome, and the Sixth Committee must now consider the possibility of implementing its recommendations. The recommendation for the submission of an advanced assessment of the potential impact of sanctions on the target country and on third States was a useful one, but the recommendation concerning appointment of a special representative of the Secretary-General and special evaluation missions needed further study. It must always be borne in mind that the measures taken to ease the effects on third States must not hamper the application of the sanctions themselves.

12. His delegation stressed the importance of the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council*, not only for delegations but for the public at large. It commended the Secretariat's efforts to expedite the issue of those publications. However, according to the Secretary-General's report (A/53/386), publication was currently one and a half decades in arrears. A practical solution must be found from withing existing resources. Publication could surely be further expedited if the Secretariat gave the matter priority.

13. His delegation endorsed the views expressed by the International Court of Justice on the increase in its workload, which was described in the Secretary-General's report on that topic (A/53/326). The measures already taken by the Court to meet the challenge were commendable, but it must be given adequate resources to respond to the increasing needs; the General Assembly must respond to the Court's appeal, bearing in mind in particular the different treatment accorded to the Court and the International Tribunal for the Former Yugoslavia. In view of the Organization's financial difficulties, the issue should be discussed in the Fifth Committee with a view to giving priority to the Court's budget.

14. The efficiency of the Special Committee could be greatly enhanced by improving its working methods. At its fifty-third session his delegation had promised to submit a concrete proposal in the Sixth Committee, which it would now do.

15. Firstly, the Special Committee's recommendation that its sessions should be scheduled later in the first half of the year should be endorsed because delegations would then have sufficient time following the Sixth Committee's deliberations to prepare for discussions in the Special Committee. The time gap would also tend to prevent repetition of the discussions just held in the Sixth Committee.

16. Secondly, his delegation was in favour of shortening the Special Committee's sessions to one week: a calculation of the meeting time actually used at the 1998 session demonstrated that the work could be completed in one week. However, in view of the difficulty which a one-week session

might present for some delegations, his delegation proposed a compromise of a 10-day session, which could be tested in 1999 on an experimental basis.

17. Thirdly, it was important to start meetings punctually and not abuse conference services. It was particularly important for the Special Committee to set a good example by not wasting the Organization's money.

18. Fourthly, it was important for delegations to submit documents early, for participants could make only preliminary comments on documents submitted during the session. Submission of documents at least one month in advance would both enhance the discussions and produce concrete results for the sponsors of the documents as quickly as possible.

19. Lastly, in order to prevent the continual discussion of topics for many years without any concrete results and the duplication of discussions in other bodies, it would be worth studying a cut-off mechanism. It would not be appropriate to introduce new topics at present, and current topics should not be discarded without a comprehensive exchange of views. His delegation therefore proposed that the Special Committee should take a decision on the continuation of a topic after it had been on the agenda for three years, taking into consideration the topic's usefulness and the possibility of concrete results. Consideration should also be given to establishing medium and long-term programmes of work, following the example of the International Law Commission.

20. **Mr. Kerma** (Algeria) said that although the reform of the United Nations was also considered by other bodies, the Special Committee still had a role to play, especially with respect to the legal matters falling within the competence of the Sixth Committee. However, it was important for the Special Committee to be able to work in harmony with the other bodies so as to avoid duplication and waste of resources. The question of assistance to third States affected by sanctions was certainly one of the most complicated of the important issues on the Special Committee's agenda, even though no substantive results had been achieved over many years. His delegation would welcome a permanent solution to the problem, especially as the frequent recourse to economic sanctions affected an increasing number of countries and was proving counter-productive.

21. Sanctions should not have the implicit consequence of harming third countries, and it was therefore quite right that the large number of affected countries should endeavour to define fundamental principles to govern the adoption and application of mandatory sanctions. The existing system of case-by-case consideration had demonstrated its limitations, and in any event a narrow interpretation of Article 50 and the involvement of only the international financial institutions in the solution of the problem did not amount to a constructive and realistic approach. What was needed was a permanent solution involving the creation of a permanent mechanism. At their recent summit in Durban the non-aligned countries had emphasized the need to establish such a mechanism, including a fund, to help third countries affected by sanctions. His delegation nevertheless acknowledged the Secretary-General's efforts to find a solution applicable in all cases. In that connection the recent convening of an ad hoc group of experts was particularly welcome. The group's recommendations gave some idea of the difficulty of the task but they should now be implemented with respect to the Security Council.

22. It was time to undertake an in-depth examination of the sanctions regime, its objectives and its implementation. He recalled that the Durban Declaration had stressed that the imposition of sanctions was an extreme measure which should be adopted only once all peaceful means for the settlement of disputes had been exhausted. Sanctions should be limited in time and the concept of "humanitarian limits" should not only be central to any consideration of the issue but should be considered as soon as sanctions were imposed. In that connection, his delegation considered that the working paper submitted by the Russian Federation on sanctions had considerable merit and should be carefully examined. Similarly, his delegation supported the principle of continuing the examination of the proposal submitted by Cuba on strengthening the role of the General Assembly, democratizing the Security Council and introducing greater transparency to its methods of work (A/53/33, chap. III.D).

23. The Secretary-General's report on the consequences of the increase in the volume of cases before the International Court of Justice on the operation of the Court (A/53/326) was most instructive, both in the detail that the Court provided of its financial and human resource difficulties and its efforts to make its work more efficient. In those circumstances, the Special Committee could, without interfering in the Court's domain, look into practical ways of strengthening the Court while fully respecting its independence and authority. In any case, the Court should be given a favourable response to its requests, given its global mission to settle disputes between States and the growing number of cases brought before it.

24. His delegation attached importance to the publication of the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council*, which represented the Organization's institutional memory. The Secretary-General's report (A/53/386) outlined the various methods employed to push the work forward, but the main

difficulty was the lack of financial resources and there was a real risk that publication of the *Repertory* and the *Repertoire* would slip even further into arrears. His delegation encouraged the Secretary-General to persevere in his efforts to overcome all the difficulties involved.

25. **Mr. Al-Akwaa** (Yemen) said that his delegation attached particular importance to finding ways of alleviating the negative impact of sanctions on third States. In that connection the proposals made by the Russian Federation deserved consideration and his delegation was in favour of the creation of a trust fund to assist States in accordance with Article 50 of the Charter.

26. Sanctions should only be used where it was confirmed that they were the only means of dealing with a threat to international peace and security and ensuring the stability of the region concerned. In the past, sanctions had in many cases given rise to violations of human rights, such as the right to life, food, medical care and development, and had often failed to achieve their objectives.

27. His country had suffered, and continued to suffer, economically simply as a result of its compliance with sanctions imposed on certain States; his delegation considered that the international community should assume full responsibility for compensating States that had suffered damage as a consequence of their compliance with sanctions.

28. Various delegations had made very valuable contributions on ways of strengthening the role of the Organization and revitalizing the Charter. Particular mention should be made in that connection of the proposals by the Russian Federation, Cuba and the Libyan Arab Jamahiriya (A/53/33, chap. III).

29. Referring to the proposal made by Sierra Leone for the establishment of a dispute prevention and early settlement service (A/53/33, chap. IV), he said that his delegation was in favour of avoiding duplication and preserving the freedom of States to choose whatever means they considered appropriate for the peaceful resolution of disputes.

30. The proposal made by Guatemala to amend the Statute of the International Court of Justice to enable it to rule on disputes between States and international organizations warranted detailed consideration because it would require an amendment to the Charter, of which the Statute of the Court was an integral part. However, his delegation supported the suggestion to increase the allocations to the Court so as to enable it to assume its increased responsibilities and publish its opinions and judgments in a timely manner, thereby encouraging States to resolve their disputes peacefully.

31. With respect to the proposal made by Malta concerning the Trusteeship Council (A/53/33, chap. V), he said that consideration should be given to the possibility of transferring resources from the Council, even if only temporarily, to development and environmental conservation programmes of the United Nations in the developing countries, particularly the least developed countries.

32. In conclusion, he said that some of the proposals that had been made would require amendments to the Charter. His delegation felt that such amendments should be made where certain provisions were outdated and no longer met current needs. However, changes should be made only after careful consideration of their advantages and disadvantages and would only become effective if approved by two thirds of the members of the United Nations.

33. **Mr. Andjaba** (Namibia) said that sanctions should be imposed only after all peaceful measures had been exhausted and with due regard to Articles 49 and 50 of the Charter. It was regrettable that, although some measures had been taken to mitigate the hardship caused by the imposition of sanctions, no permanent solution to the problem had been found. In that context his delegation reaffirmed its support for the proposal made by the Movement of Non-Aligned Countries that a trust fund should be established to assist third States affected by the imposition of sanctions. While financial institutions could play a role in evaluating and mitigating the economic, trade and financial effects of sanctions, however, the responsibility of finding a permanent solution rested with the United Nations, in whose name sanctions measures were imposed. The responsibility could not be passed on to financial institutions. In that connection, his delegation agreed with the view expressed in document A/53/312 that the costs of measures such as economic sanctions should be borne by the international community at large on a more equitable basis.

34. His delegation welcomed the working paper submitted by the Russian Federation entitled "Some ideas on the basic conditions and criteria for imposing and implementing sanctions and other enforcement measures". Before sanctions were imposed, their scope and purpose should be defined clearly. Their duration should be clearly specified, and care should be taken that they did not undermine the capacity of either the target State or a third State to carry out its humanitarian obligations under international law.

35. With regard to proposals that the Trusteeship Council should be reconstituted to deal with environmental matters, he reiterated his delegation's view that such a move might create duplication with existing bodies. The proposals should be thoroughly examined. Lastly, his delegation supported

the recommendation by the Special Committee that its future sessions should be scheduled, to the extent possible, later in the first half of any given year.

Mrs. Flores Liera (Mexico), Vice-Chairman, took the Chair.

36. **Mr. Yengejeh** (Islamic Republic of Iran) said that the Secretary-General's report which appeared as document A/53/312 contained a number of useful ideas and recommendations, including measures to minimize the collateral damage of sanctions. Owing to the technical nature of a number of the issues raised, however, the report should be carefully examined by the Special Committee and other relevant committees before any conclusions were reached.

37. The issues covered by the revised working paper submitted by the Russian Federation were valid and deserved consideration. The time was ripe for a thorough examination of the sanctions regime. Any revision should take account of the following considerations. First, sanctions should be used only as a last resort when all other options enshrined in the Charter were exhausted. Secondly, they should always be implemented in strict accordance with the provisions of the Charter. Thirdly, due attention should be given to the adverse humanitarian impact of international sanctions on the most vulnerable sections of the population of the target State. Fourthly, the devastating effects of sanctions on trade and development required a sober assessment. Fifthly, sanctions should not be enforced for an unlimited period of time. Lastly, the United Nations had a clear mandate to apply coercive economic measures only where there existed a threat to peace or a breach of the peace.

38. There was a substantive difference between sanctions based on the Charter and unilateral economic measures by individual States, which had no basis in international law but had unfortunately been on the rise in recent years. The General Assembly had repeatedly denounced economic coercion as a means of achieving political goals, most recently in General Assembly resolution 52/181. In that context, the ideas contained in the Russian Federation's working paper could and should be further developed by the Special Committee, which had the necessary expertise to formulate the elements and principles involved; the end result would be to provide the Security Council with clearer, objective criteria to guide its decisions on the imposition and lifting of sanctions.

39. With regard to the other working paper submitted by the Russian Federation, entitled "Fundamentals of the legal basis for United Nations peacekeeping operations in the context of Chapter VI of the Charter of the United Nations", he said that further consideration of the topic by the Special Committee should not duplicate the work of the Special Committee on Peacekeeping Operations, which was equipped with the necessary expertise. With regard to the peaceful settlement of disputes, he emphasized that the Special Committee should, in dealing with any proposal relating to dispute settlement procedures, always be mindful that the free choice of means laid down in Article 33 of the Charter was a fundamental principle of international law.

40. With regard to the proposals submitted by Guatemala and by Costa Rica relating to possible amendments to the Statute of the International Court of Justice and the extension of the Court's jurisdiction to disputes between States and intergovernmental organizations (A/53/33, chap. IV.B), his delegation was not convinced that the existing mechanisms for the settlement of disputes had proved inadequate. Furthermore, in its resolution 52/161 the General Assembly had already indicated that it would not undertake any measure leading to the amendment of the Statute of the Court. In addition, it emerged from document A/53/326 that the average length of proceedings before the Court had grown from two and a half to four years. In those circumstances it would be unwise to increase the burden on the Court by expanding its contentious jurisdiction. In that context, he commended the Court for the measures that it had undertaken to enhance its efficiency.

41. His delegation was aware that the status of the Trusteeship Council no longer conformed with modern realities. The Council was not, however, a suitable forum for a new mandate of even greater importance. Moreover, any change to the membership or the mandate of the Council would require revision of the Charter.

42. As to the working methods of the Special Committee, his delegation believed that the duration of future sessions should be determined at the end of each session, taking into consideration the Special Committee's workload. His delegation also endorsed the recommendation that sessions should be scheduled later in the first half of any given year.

43. **Mr. Zmeevsky** (Russian Federation) said that, while the Special Committee had carried out valuable work, the time was approaching for specific solutions to be found for the problems associated with sanctions. His delegation welcomed the Secretary-General's report which appeared as document A/53/312: the ad hoc expert group was on the right track in its recommendations, particularly those regarding the preparation of a tentative list of the potential effects of sanctions on third States, the monitoring of such effects by the Secretariat and the appointment in the most severe cases of a Special Representative to assess the consequences actually incurred by affected countries. Consideration should also be given to the recommendation

that special fact-finding missions should be dispatched on the ground. It was regrettable that the report had been issued late, otherwise his delegation would have been able to present a more detailed analysis. Work on the subject should undoubtedly, however, continue. His delegation would welcome a report by the Secretary-General that would summarize the reactions of States and international bodies to the experts findings. Either the group's mandate should be renewed or a Sixth Committee working group should be established to assess Governments' reactions, in particular with regard to the suggestion about the tentative list of potential effects of sanctions on third States.

44. Meanwhile, the working paper on sanctions submitted by his delegation, concentrated the Special Committee's attention on specific – above all, legal – aspects of sanctions-related issues that required urgent attention. Once the constituent factors had been properly categorized, the Special Committee could draw up rules or guidelines on the imposition, implementation and lifting of sanctions. His delegation's working paper placed particular emphasis on the "humanitarian limits" of sanctions. It drew attention to the human rights factors, the role of international humanitarian organizations and adjustments to sanctions in the light of the humanitarian situation within the State against which such sanctions were directed. That approach corresponded to the provisions of General Assembly resolution 51/242 ("Supplement to an Agenda for Peace") and other resolutions calling for further consideration of the "humanitarian limits" of sanctions. He trusted that at its next session the Special Committee would continue to consider the document paragraph by paragraph.

45. The aim of his delegation's other proposal, concerning peacekeeping, had been to highlight the legal framework of United Nations peacekeeping activities and on that basis to stimulate discussion on the issue within the Special Committee. The work should, however, be undertaken with all due caution and with due account of the results of consideration by other United Nations bodies of the practical aspects of peacekeeping. The aim should be to establish guiding principles or rules.

46. With regard to the Trusteeship Council, his delegation would prefer to maintain the status quo, under which the Council's human and financial resources were being used by other United Nations programmes. The idea that the Council should be given environmental responsibilities was contentious and would require additional painstaking consideration. Effectively, the suggestion was to establish a new United Nations body, yet the abolition of one organ and the creation of another were two separate processes that should not be combined.

47. The Special Committee had a mandate to play a substantive role in the review of the legal aspects of United Nations reform. At the same time, there had been occasional discussions on coordination between the Special Committee and other working groups dealing with the reform of the Organization. It was an issue requiring more in-depth discussion, both to make the Special Committee more efficient and to avoid duplicating the work of other United Nations bodies.

48. His delegation hoped that the suggestions contained in paragraph 163 of the Special Committee's report would in practice rationalize its work. With regard to the Secretary-General's report on the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council* (A/53/386), it was regrettable that the document had been issued too late. He hoped that the measures undertaken within the Secretariat would help stem the delay in issuing the *Repertory* and the *Repertoire*.

49. **Mr. Gõrõg** (Hungary) said that his delegation associated itself with the statement made earlier on the item by the representative of Austria on behalf of the European Union, and would therefore confine itself to a few additional remarks in two areas of specific interest.

50. His delegation placed on record its appreciation for the report of the Secretary-General (A/53/312), which offered a valuable assessment of the problems affecting third States as a result of the imposition of sanctions, and suggested possible remedies that could be implemented by the international community. His country was among those which had been exposed to the damaging economic consequences of the sanctions imposed against the Federal Republic of Yugoslavia. Nevertheless, during the period of the sanctions regime, his Government had adhered faithfully to the provisions of the relevant Security Council resolutions. While his country had witnessed the positive signs of international cooperation referred to in the statement of the European Union, its experience also showed that the provisions of Article 50 of the Charter of the United Nations had yet to be fully implemented.

51. His delegation was well aware of the difficulties confronting the international community as it endeavoured to strike a balance between, on the one hand, the need to uphold international law and the responsibilities of the Security Council under the Charter, and, on the other hand, the legitimate requests of third States for assistance that would enable them to cope with the special economic problems they faced as a result of the carrying out of enforcement measures. Against that backdrop, his delegation shared the cautious approach reflected in the conclusions and

recommendations of the ad hoc expert group (A/53/312, paras. 49–57). Those conclusions and recommendations represented an important step towards genuine implementation of the provisions of Article 50 of the Charter and deserved serious and timely consideration by the General Assembly, the Secretary-General and the Security Council.

52. Turning to the issue of the consequences that the increase in the volume of cases before the International Court of Justice had on the operation of the Court (A/53/326), his delegation reconfirmed its support for the European Union's position on that question. As the principal judicial organ of the United Nations, the Court should always be given the necessary means to perform its functions without major financial constraints. His delegation had studied with great interest the comments and observations received from the Court. While it was appreciative of the efforts made by the Court to meet the challenge of its increased workload, his delegation was of the view that such efforts could not resolve all the growing difficulties faced by the Court. His Government endorsed the view that if the necessary resources were not provided, the importance of the peaceful resolution of international disputes through law would be greatly diminished. That would be all the more regrettable in the light of the trend seen over the past decade, namely, the marked increase in recourse by States to the Court.

53. Having been a party to a case before the Court, Hungary continued to have a vested interest in the efficient and unimpeded execution of its tasks. In that connection, his delegation had taken note of the recommendations and proposals concerning the written pleadings and the oral statements in the proceedings of the Court, contained in the annex to document A/53/326. His delegation, while fully aware of the constraints resulting from diminished resources and the budget already approved for the biennium, hoped that the legitimate requests of the Court would be honoured by the General Assembly in the preparation and adoption of the forthcoming biennial budget.

54. **Mr. Sotirov** (Bulgaria) said that his delegation, too, endorsed the views of the European Union on the item under consideration. As stated on previous occasions, his delegation attached paramount importance to the maintenance of international peace and security and supported the joint efforts of the international community to that end, including those undertaken under Chapter VII of the Charter. His Government had strictly implemented all the Security Council resolutions imposing sanctions on the Federal Republic of Yugoslavia and his country had suffered serious economic losses as a result. If those losses were combined with the costs resulting from the imposition of sanctions against the Libyan Arab Jamahiriya and Iraq, then the total direct and indirect costs to his country would be comparable to its foreign debt. His delegation therefore attached particular importance to the implementation of the Charter provisions related to assistance to third States affected by the application of sanctions. It had repeatedly stressed that the application of certain measures under Chapter VII of the Charter should be accompanied by efforts to avoid negative effects on third States, and, where such effects nonetheless occurred, to assist those States promptly and effectively. To that end, the establishment of an appropriate mechanism for rendering assistance to third States facing such difficulties was still needed.

55. In that context, his delegation welcomed the provisions of General Assembly resolutions 50/51 and 51/208, especially the appeal to organizations within and outside the United Nations system to continue to address more specifically and directly the issue of economic assistance to third countries affected by sanctions. His delegation noted the response of the international financial institutions, other international organizations and donor countries to the Secretary-General's request to them to take into consideration the special economic problems arising from the implementation of sanctions. The concerns of States had been reflected to a greater or lesser extent in the support programmes and specific activities of the institutions in question.

56. His delegation appreciated the continuing attention paid by intergovernmental and regional organizations, particularly the Organization for Security and Cooperation in Europe (OSCE) and the European Union, to the needs of affected States for assistance in governance, capacity-building and the development of a regional transport, energy and communications infrastructure. It must be recognized, however, that the assistance rendered so far was still inadequate to compensate for the losses resulting from the implementation of sanctions. His delegation therefore welcomed the deliberations and main findings of the ad hoc expert group meeting contained in document A/53/312, particularly the results of the discussion on issues related to: (a) developing a possible methodology for assessing the consequences actually incurred by third States as a result of preventive or enforcement measure, and (b) exploring innovative and practical measures of international assistance that could be provided to third States by the relevant organizations within and outside the United Nations system.

57. With regard to the development of a possible methodology, his delegation shared the view that the important issue was finding an appropriate procedure for the

implementation of such methods. The elaboration of a general conceptual framework for identifying and assessing the effects of United Nations-imposed preventive or enforcement measures on third States was very important. The consideration of issues and procedures related to the identification and proper categorization of various effects, the selection of applicable methods for estimating the incurred losses and costs, and subsequently the design of feasible and practical measures of relief and international assistance were to be commended. Such approaches must, however, contribute to the development of a general methodology of impact assessment.

58. With regard to concrete measures of assistance to affected third States, his delegation supported the suggestions that the International Monetary Fund (IMF) and the World Bank might wish to consider establishing a mechanism which would allow those institutions to mobilize new and additional resources from all potential funding sources in order to provide emergency financial support to affected third States on exceptional and concessionary terms. His delegation also noted the recommendation that the United Nations development programmes and specialized agencies should focus on providing emergency relief, as well as longer-term assistance, to affected third States to enable them to cope with the social and humanitarian effects of sanctions. The application of funding procedures similar to those adopted for peacekeeping operations also deserved careful attention and analysis.

59. His delegation was of the view that the Sixth Committee and the Special Committee should continue their efforts aimed at finalizing the work on the issue as soon as possible so that the ideas contained in the report could be translated into practice. Bulgaria trusted that the draft resolution on the issue, of which his country was a sponsor, would be supported by Member States.

60. **Ms. Betancourt** (Venezuela) said that her country attached special importance to the issue of assistance to third States affected by the application of sanctions. The adoption of sanctions against a State should be viewed as an extreme measure to be taken only after all other possibilities had been exhausted, and only when it had been determined that there was a threat to international peace and security.

61. Her delegation had studied the report of the Secretary-General on the findings of the ad hoc expert group convened pursuant to General Assembly resolution 52/162 (A/53/312). The Committee should examine the report in detail, and should consider ways to set up an effective mechanism for enhancing the role of the financial institutions.

62. Her delegation supported the recommendations made by the ad hoc expert group concerning the methodology that should be developed for assessing the consequences incurred by third States as a result of preventive or enforcement measures. A mechanism should be set up to allow for consultations between the Security Council and the countries that might be affected by sanctions imposed on other States.

63. With regard to the application of Article 50 of the Charter, she said that the revised version of the working paper submitted by the Russian Federation entitled "Some ideas on the basic conditions and criteria for imposing and implementing sanctions and other enforcement measures" provided some useful insights into the legal and humanitarian aspects of sanctions. However, the Russian proposal to the effect that some aspects of peacekeeping operations should be considered in the context of Chapter VI of the Charter could lead to an overlapping of activities with other bodies within the Organization that were already dealing with that matter. The Special Committee should be careful to use its time wisely, given that it had so many other important items on its agenda.

64. Turning to the question of the settlement of disputes, she said that the new working paper submitted by the delegation of Sierra Leone, on the establishment of a dispute prevention and early settlement service was interesting and should be given close consideration by the Committee. Although the proposal was an ambitious one, it could eventually lead to the adoption of a mechanism for using diplomatic channels for dispute prevention and early settlement.

65. The time did not seem right for the Guatemalan proposal on possible amendments to the Statute of the International Court of Justice to extend its competence with respect to contentious matters to disputes between States and international organizations, particularly since so few countries had made the declaration referred to in Article 36, paragraph 2, of the Statute.

66. Her delegation endorsed the recommendation in paragraph 167 of the report of the Special Committee (A/53/33) to the effect that the future sessions of the Special Committee should be scheduled, to the extent possible, later in the first half of any given year. She wished to stress, however, that the Special Committee's sessions should not be shortened.

67. **Mr. Rosenstock** (United States of America), noting that the Special Committee had recommended to the General Assembly that its future sessions should be scheduled, to the extent possible, later in the first half of any given year, said that his delegation could go along with that suggestion

provided that it did not conflict with other imperatives. The Special Committee must be able to make adjustments in its schedule in line with what the situation required. To insist, mechanically, that the Special Committee should meet every year for the same period of time, regardless of circumstances, was to risk relegating the Special Committee to the category of a useless encumbrance. To the extent that it was desirable for the Special Committee to meet, his delegation would support any suggestion aimed at enhancing its efficiency, including a concerted effort to rationalize its work in the light of the work being carried out by other bodies. For example, the current proposals for the Special Committee to establish basic principles and criteria in the areas of peacekeeping and enforcement measures were clearly duplicative.

68. As part of a real effort to make the best use of the limited resources available, the Special Committee must be able to distinguish between those matters on which the potential existed for it to make a significant contribution and those on which it did not. Whether the Special Committee should meet in 1999 and for how long should be a function of the issues before it and the demands made on finite resources by other bodies.

69. With regard to the question of the implementation of the Charter provisions related to assistance to third States affected by the application of sanctions, his delegation was of the view that a sharpened focus on methodological and other technical issues, rather than further drafting exercises, was precisely the type of activity that was warranted at the current stage. His delegation expressed appreciation to the participants in the expert group meeting for their valuable work, which had highlighted the difficulties inherent in developing a standard methodology for assessing the third-country impact of sanctions, and to the Secretary-General for the report on the meeting (A/53/312). The logical follow-up would appear to be to solicit the views of Member States and others concerning the deliberations of the expert group as reflected in the Secretary-General's report. On the other hand, consideration of such a report by a working group of the Sixth Committee would probably be unproductive.

70. It was especially important to solicit the views of the international financial and trade institutions. As noted in paragraphs 43 and 44 of the Secretary-General's report, the expert group was of the view that the international financial institutions, both at the global and regional levels, possessed, in principle, the required expertise, existing instruments and financial resources to assist Member States in coping with such external economic shocks as the imposition of sanctions. For that reason, the group agreed that those institutions should play the lead role in both assessing the economic consequences actually incurred by third States and in providing financial assistance to those affected countries. The expertise of the international financial institutions would be most useful in implementing practical approaches to the difficulties encountered by some States in providing certain types of information identified by the expert group. While some delegations continued to hold the view that looking to the international financial and trade institutions to play a lead role with respect to those matters was an abdication of the role and responsibilities of the Organization, other delegations, as well as the ad hoc expert group, viewed that as a "real-world" approach to Article 50 issues, unlike proposals for the establishment of a trust fund, which were clearly unrealistic.

71. As mentioned in the report, there were other steps that could be taken to make the best possible use of existing resources and expertise, including the mobilization of various parts of the Secretariat with a view to developing and providing appropriate information in as effective and timely a manner as possible. Governments and the Secretariat would need to assess whether the expert group's recommendations made good substantive as well as bureaucratic sense.

72. Lastly, contrary to what some delegations had suggested, a decision by the Security Council to impose sanctions was indeed a step taken as a last resort. Such a step must never be taken lightly, precisely because of the potential effects on third States. His country, too, was included in that group; as noted in the report, the imposition and implementation of sanctions had reduced United States bilateral trade by up to 91 per cent in some cases.

73. Turning to the consequences that the increase in the volume of cases before the International Court of Justice had on the operation of the Court (A/53/326), he said it was clear from the Court's thorough response to the Secretary-General's invitation to comment that it had been waiting for an opportunity to make its concerns known. In that regard, the initiative taken by Mexico in the Special Committee and endorsed by the Special Committee and the General Assembly had served a useful purpose. In the contemporary world, it was of the utmost importance that the existing dispute settlement institutions should be as strong as possible. His delegation was inclined to support the proposal submitted by Guatemala for the transmission of the Court's views to the Fifth Committee for its consideration.

74. With regard to the proposals concerning the Trusteeship Council contained in the report of the Special Committee, his delegation maintained the view that the most

appropriate step would eventually be to eliminate the Trusteeship Council and amend the Charter accordingly.

75. As to the proposal submitted by Sierra Leone for the establishment of a dispute prevention and early settlement service, his delegation continued to believe that further practical steps should be taken to enhance the early warning of and timely intervention in disputes, and that the proposal laid the groundwork for further attention by the Special Committee.

76. Lastly, with regard to the *Repertory* and the *Repertoire* (A/53/386), his delegation shared the view of the European Union that if it proved impossible to speed up the preparation and production of the two publications, the Secretary-General should consider the possibility of outsourcing the work to interested academic institutions. As an alternative, such a step could be taken on a one-time basis, solely for the purpose of eliminating the backlog, while responsibility for future volumes would continue to lie with the Secretariat. In that case, new procedures would need to be implemented which would enhance the timeliness of production of the publications. His delegation also agreed that every effort should be made to provide for access to those sources through the World Wide Web.

77. Lastly, his delegation's decision not to dignify with a reply the absurd remarks made by the Democratic People's Republic of Korea should not be construed as acquiescence in that State's attempt to rewrite history.

78. **Mr. Ogonowski** (Poland) said that his delegation endorsed the statement made under the item before the Committee by the representative of Austria on behalf of the European Union.

79. On the question of assistance to third States affected by the imposition and implementation of sanctions, he said that the conclusions contained in the report of the ad hoc group of experts (A/53/312) should be discussed in depth, given the complex nature of the problem. It should be borne in mind that what was at stake was the effectiveness of sanctions regimes in general. Serious consideration should be given to the implementation of Article 50 of the Charter in each case of imposition and implementation of sanctions. It was also important not to lose sight of the aim of the application of sanctions, which was to maintain or restore international peace and security. To achieve that aim, sanctions had to be effective. They were, under normal circumstances, preferable to the use of armed force provided for in Article 42 of the Charter.

80. While the legal basis for peacekeeping operations was contained in the Charter, the requirements of a particular operation would normally necessitate the creation of an additional legal framework suitable for the specific circumstances of each case. In considering that issue, the Special Committee on the Charter should avoid encroaching upon the competence of other bodies. The proposal concerning the establishment of a dispute prevention and early settlement service submitted by Sierra Leone should be given further consideration.

81. With regard to the future of the Trusteeship Council, his delegation was of the opinion that the Special Committee should continue to discuss the various proposals that had been tabled with a view to reaching consensus.

82. Referring to the report of the Secretary-General on the consequences that the increase in the volume of cases before the International Court of Justice had on the operation of the Court (A/53/326), he pointed out that the Court did not operate the way other United Nations organs did and had limited possibilities to generate savings. It had taken significant steps to improve the efficiency of its work; his delegation hoped that measures would be taken to provide it with sufficient means to continue working efficiently.

83. Efforts to reduce the backlog in the preparation of the *Repertory* and the *Repertoire* should be significantly increased.

84. In regard to the working methods of the Special Committee, he said that sufficient time should be given to prepare for its session after the conclusion of the main part of the session of the General Assembly in December. In the future, the work of the Special Committee should be concentrated on legal matters, giving priority to those areas where progress within a reasonable time was feasible.

85. **Mr. Manongi** (United Republic of Tanzania) said that the issue of assistance to States adversely affected by supporting sanctions imposed by the Security Council was important for two reasons: firstly, because the ability of the Security Council to impose meaningful sanctions for the purposes of restoring or maintaining international peace and security depended on the degree of support the sanctions regime received from Member States; secondly, because Member States called upon to enforce sanctions were less likely to be reliable allies when there was no assurance that the substantial economic sacrifices they were to undertake would be alleviated by an established burden-sharing mechanism.

86. It was in that context that his delegation commended the findings of the ad hoc expert group. The ad hoc group's contribution was critical in giving meaning and operational value to Article 50 of the Charter. In particular, his

delegation welcomed the norms and procedures for impact assessment recommended by the ad hoc group; however, the impact of those recommendations would be further strengthened by providing a specific mechanism for the adjudication of claims submitted by third States. The matter was too important to be left to consultations alone.

87. At a time when reform of the United Nations was also understood to mean downsizing, it was difficult to suggest establishment of a fully fledged body acting as an agency of the Security Council. Nevertheless, proposals for setting up a fund to help affected States deserved serious attention.

88. His delegation further commended the ad hoc group for pointing out that financial assistance might need to be supplemented by non-financial measures of trade promotion. The Security Council and the Secretary-General should encourage the creation of new trading relations to serve as a reliable framework for mutual support in the enforcement of sanctions.

89. **Mr. Pham Truong Giang** (Viet Nam) said that his delegation attached great importance to the implementation of Charter provisions concerning assistance to third States affected by the imposition of sanctions. Sanctions shou'd be considered only as a last resort, after all peaceful means of settling a dispute had been exhausted and after a clear determination of the existence of a threat to peace or a breach of the peace had been made. The imposition of sanctions by the Security Council should always be accompanied by financial arrangements for assisting third States that might be affected. Under Article 50 of the Charter, those third States were entitled to consult the Security Council with regard to a solution of their problem.

90. His Government fully endorsed the position taken by the Non-Aligned Movement at its 1998 summit on the question of sanctions and assistance to third States. Sanctions should be imposed for a specified time-frame and should be based on tenable, legal grounds; as soon as their objectives were achieved, they should be removed. In order to allow for a permanent solution to the matter, an effective mechanism should be established and a fund should be set up to provide relief to third countries affected by United Nations sanctions.

91. The convening of an ad hoc group of experts was a step in the right direction, but there should be adequate participation in the group's meetings on the part of experts from those third States and the group should reflect equitable representation of geographical regions and different legal systems.

92. The revised proposal by the Russian Federation on basic conditions and criteria for imposing and implementing sanctions and other enforcement measures was very useful, and should be examined in detail by the Committee.

93. The working paper submitted by the Russian Federation on the legal basis for peacekeeping operations in the context of Chapter VI of the Charter was also very practical, and should be helpful in developing a legal framework for peacekeeping operations. Bearing in mind that 1998 was the fiftieth anniversary of United Nations peacekeeping operations, a set of basic guidelines for those activities should be devised on the basis of the provisions of the Charter and the experiences of the past fifty years.

94. The Special Committee should play a more active role in and make a greater contribution to the ongoing process of reform of the Organization. Special attention should be paid to the enhancement of the role of the General Assembly and the expansion of the Security Council, which should be made more representative and accountable, with due regard for the participation of developing countries, in accordance with the principles of sovereign equality and equitable geographical representation. In that regard, the Committee should set aside enough time to discuss in depth the proposal submitted by Cuba on strengthening the role of the Organization and enhancing its effectiveness.

95. Turning to the question of peaceful settlement of disputes, he said that the proposal by Sierra Leone on the establishment of a dispute prevention and early settlement service should be examined further, especially with regard to issues relating to the definition, scope, mandate and financial implications of the proposed mechanism.

96. His delegation considered the *Repertory* and the *Repertoire* to be important reference sources, and supported their early updating and continued publication.

97. His delegation had given careful consideration to the proposals on the strengthening of the International Court of Justice, in particular the proposals made by Guatemala and Mexico.

98. He reaffirmed his delegation's support for the inclusion of an item on the report of the Special Committee on the provisional agenda of the fifty-fourth session of the General Assembly.

99. **Mr. Dahab** (Sudan) said that the International Court of Justice had an essential part to play in the prevention of the use of force by States to resolve their disputes, which was among the noblest objectives of the United Nations, and that the financial difficulties being faced by the Court, as described in the report of the Secretary-General on the

increase in its workload (A/53/326) were hardly in keeping with its important role. It was the duty of the General Assembly to adopt an appropriate resolution in order to resolve those difficulties.

100. The Special Committee's report dealt with some of the most important responsibilities of the Organization.

101. With respect to the imposition of sanctions, it was worth remembering that, as the delegation of the Russian Federation had pointed out to the Special Committee the previous year (A/52/33, para. 30), sanctions had been imposed 116 times during the twentieth century while the intended objectives of the sanctions had been achieved only in 41 cases. Of those, the success rate had been 50 per cent before the 1980s, whereas since then the success rate had been only 25 per cent. He appealed to the Sixth Committee to adopt the draft resolution which had been submitted at the previous session by a number of delegations calling for a study to be made of cases in which the Security Council had taken action under Chapter VII of the Charter.

102. Referring to the working paper submitted by the Russian Federation entitled "Some ideas on the basic conditions and criteria for imposing and implementing sanctions and other enforcement measures", he drew attention to some of the conditions specified in the paper that should govern the imposition of sanctions in particular: the need to set a time-frame for sanctions, the impermissibility of using sanctions to overthrow or change the lawful regime or the existing political order in the country that was the object of sanctions, and the fact that sanctions should be a last resort to be applied only after exhaustion of all the peaceful remedies specified in the Charter.

103. Sanctions had a devastating effect on the developing countries in general, and on the least developed countries in particular, and could impair their development and even threaten their very existence and territorial integrity. Due attention should also be paid to the impact of sanctions on children and it should be borne in mind that sanctions impaired basic human rights in the countries against which they were imposed, and in third countries affected by those sanctions.

104. Notwithstanding the many questions that had been raised as to the competence of the Special Committee to consider the issues currently under discussion, his delegation reaffirmed its conviction that the Sixth Committee had competence to address those issues through the Special Committee. Coordination between the various working groups within the United Nations system was required in order to give effect to its lofty purposes, and such coordination should be carried out by the Office of Legal Affairs of the United Nations.

105. In conclusion, he said that the reform within the United Nations and the improvement of its functioning was dependent on the implementation of the provisions of the Charter and on the authority of the General Assembly.

106. **Mr. Lordkipanidze** (Georgia), referring to the question of sanctions, pointed out that under Chapter VII of the Charter, the Security Council had broad discretionary powers to decide and which measures to apply in different situations and when to apply them. Thus, the scope of application of those powers extended to situations that did not match the description of inter-State disputes but still posed a threat to international peace and security. There was a potential for internal conflicts to attain the magnitude of a threat to international peace and security; for example, aggressive separatist movements could undermine the sovereignty and territorial integrity of a Member State and thus endanger peace and security in a whole region. That was the case in Abkhazia, Georgia, where ethnic cleansing of the Georgian population was leading to uncontrolled militarization of the region.

107. His delegation was of the view that sanctions should be imposed only in the event of a real, objectively verified and factually established threat to international peace or a breach of the peace. Nevertheless, the Security Council should be allowed a wide margin of action in determining what constituted a threat. Due consideration should be given to the practice whereby the Security Council supported by its resolutions measures undertaken at the national level and recommended additional measures if necessary.

108. Notwithstanding the complex consequences of sanctions, the concern that they should not be instrumental in changing the existing political order was not entirely justified. It was difficult, if not impossible, to establish a clear correlation between sanctions and overthrowing or changing a lawful regime or existing political order. Moreover, sometimes a political order, by virtue of its very existence (as stated in the Namibia advisory opinion) might constitute a breach of international peace.

109. His delegation remained committed to the concept of "smart sanctions", in other words, sanctions that would differentiate the targeted regime from its population. Sanctions should be limited by the principle of proportionality and the norms of international humanitarian law, and any attempt to clarify and enumerate principles of "humanitarian limits" deserved support.

110. His delegation was entirely in agreement with the idea that when sanctions were imposed, the problems of third States should be considered and addressed. In that regard, it fully endorsed the recommendations set out in the report of the Secretary-General on implementation of provisions of the Charter related to assistance to third States affected by the application of sanctions (A/53/312).

111. The Guatemalan proposal on possible amendments to the Statute of the International Court of Justice to extend its competence with respect to contentious matters to disputes between States and international organizations should be given careful consideration. In the same vein, his delegation also noted with interest the report of the Secretary-General on consequences that the increase in the volume of cases before the International Court of Justice had on the operation of the Court (A/53/326); a principal organ of the United Nations should be provided with all necessary resources to carry out the task allocated to it under the Charter.

The meeting rose at 1.05 p.m.

United Nations A/C.6/53/SR.8

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Chairman: Mr. Enkhsaikhan ..... (Mongolia)
later: Mr. Mochochoko (Vice-Chairman) ..... (Lesotho)

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Agenda item 154: Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization (*continued*)

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98-81753 (E)

The meeting was called to order at 3.15 p.m.

Agenda item 154: Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization (*continued*) (A/53/33, A/53/312, A/53/326 and A/53/386)

1. **Mr. Doudech** (Tunisia), on the question of how to strengthen the role of the Organization and to improve its functioning based on the provisions of the Charter, said that, despite its intensity, the debate, which continued to focus on what was in his view the extremely important issue of assistance to third States affected by the application of sanctions, had not yet yielded an adequate solution to a most urgent problem. Tunisia continued to support the proposed mechanism for providing assistance to such States. In order to mitigate the many adverse effects of sanctions, especially on developing countries, the expert group had recommended that an advance assessment of the potential impact of sanctions should be undertaken even prior to their adoption. Similar assessments should be undertaken for sanctions already in place and a permanent mechanism created to compile and analyse information on the application of sanctions and its consequences.

2. A very useful recommendation had been made by the expert group, namely, that the Secretary-General should be requested to appoint a Special Representative to undertake, in collaboration with the Governments concerned, a full assessment of the consequences of the sanctions and to identify measures of assistance to the affected States. Follow-up to that recommendation would greatly facilitate the implementation of Article 50 of the Charter and the holding of consultations between the Security Council and third States affected by the application of sanctions.

3. In that connection, his delegation reiterated its support for the position taken by the Movement of Non-Aligned Countries in favour of the establishment of a special facility to assist third States affected by the application of sanctions. It also wished to stress the importance that should be attached to the humanitarian aspects of sanctions. In that connection, it found most interesting the contribution made by the Russian Federation in the working paper submitted at the previous session of the Special Committee, which contained valuable elements that enriched the debate on the fundamental norms and principles that should govern the adoption and application of sanctions. One of those principles was that sanctions should be contemplated only when all means for the peaceful settlement of disputes had been exhausted. Another and no less important principle was that sanctions should be adopted with a precise objective, be limited in time, be regularly reviewed and be made subject to specific conditions which, when met, should result in the termination of the measures. Lastly, it was imperative to ensure that the application of sanctions did not violate the socio-economic rights of populations by creating intolerable humanitarian situations, the first victims of which were the most vulnerable sectors of society.

4. On the question of the strengthening of the role of the Organization on the basis of the provisions of the Charter, he wished to refer to the working papers submitted by Cuba, the Libyan Arab Jamahiriya, the Russian Federation and Sierra Leone. Respect for the provisions of the Charter was essential to ensure the success of United Nations action in the field of peacekeeping and dispute prevention and to strengthen the principles of democracy, transparency and cooperation within the Organization. Similarly, respect for the principles of the sovereignty of States, non-interference in their internal affairs and the peaceful settlement of disputes was a fundamental requirement for achieving the purposes of the Charter in the area of the maintenance of international peace and security. The strengthening of the role of the General Assembly, in accordance with Articles 10 and 11 of the Charter and the broadening of consultations between the Security Council and those States concerned in matters of which, in application of Articles 31 and 32 of the Charter, the Council was seized were questions that deserved special attention with a view to the effective implementation of the legislative provisions on which action by the Organization should be based.

5. He welcomed all the proposals which had been made with a view to strengthening the role of the Organization. Any proposal of a legal nature aimed at achieving that objective should be considered by the Sixth Committee and, since no other organ of the United Nations had the necessary competence, the Special Committee remained the ideal forum within which to do so.

6. **Mr. Lavalle Valdés** (Guatemala) regretted the Special Committee's failure to achieve concrete results in its work, particularly during the year that had just ended. With regard to the Special Committee's recommendations contained in paragraph 12 of its report (A/53/33), he failed to see the value of the recommendation made in paragraph 34 on the question (albeit an important one) of assistance to third States affected by the application of sanctions.

7. He noted with regret that the other recommendation of the Special Committee, contained in paragraph 167 of its report, was of a purely procedural nature. Those shortcomings would have been less serious if the report of the Special Committee had had the potential for achieving

concrete results. Unfortunately, that was not the case, since of the eight working papers taken up by the Special Committee, one fell within the competence of another organ, which made any consensus impossible. Another proposal reproduced in large part a resolution which the General Assembly had adopted in 1997, but without mentioning that fact. It was therefore extremely doubtful whether the Special Committee would be able to adopt the proposals in the near future, because of the lack of consensus. Modifications, especially of form, would therefore be necessary.

8. With a single exception, where the criticisms mentioned in the report of the Special Committee did not amount to a total rejection of a proposal, they merely highlighted the shortcomings of the proposals submitted without offering any alternative solutions that might be acceptable to the author States. Furthermore, apart from the fact that the proposals lacked preambles, except the one reproduced in chapter IV, section B, of the report, it was unclear whether they should be the object of a declaration or resolution of the General Assembly, of the Special Committee itself or of another organ, which tended to accentuate the self-centredness that characterized the Special Committee's work. In the single case in which modifications had been suggested, that of the proposal of Sierra Leone, it might be possible to begin negotiations which could lead to its adoption by consensus. It was difficult, however, to go forward with the consideration of the proposal in the absence of prior agreement on its distinctive aspects, especially since the text did not refer to any of the traditional methods for the peaceful settlement of disputes nor did it seem to combine different elements taken from those methods.

9. With regard to Guatemala's contribution to the work of the Special Committee, namely the proposal in chapter IV, section B, of the report of the Special Committee, he did not yet know what action was appropriate. Should the proposal fail to produce tangible results in the foreseeable future, it would not be worth the Committee's while to continue considering it indefinitely.

10. He saw merit in the Ukrainian delegation's proposal that the Special Committee should break the deadlock by suspending the consideration of all proposals contained in its report that appeared unlikely to produce rapid progress, with the exception of the one on the implementation of Charter provisions related to assistance to third States affected by sanctions.

11. While his delegation regretted the Special Committee's silence with respect to the problems raised by the updating of the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council*, it endorsed the recommendation in paragraph 32 of the report thereon (A/53/386).

12. Lastly, his delegation was grateful to the United States delegation for endorsing in advance the Guatemalan draft decision concerning the increase in the volume of cases before the International Court of Justice, in the light of the comments and observations contained in the report of the Secretary-General (A/53/326). His delegation proposed that the Sixth Committee should request its Chairman to transmit the text of those comments and recommendations, for information purposes, to the Chairman of the Fifth Committee. Since it was a very straightforward proposal, his delegation's statement should be considered an introduction.

13. **Ms. Flores-Liera** (Mexico) welcomed the fact that States were resorting more and more frequently to dispute settlement mechanisms and noted with satisfaction the no doubt permanent increase in the volume of cases brought before the International Court of Justice. Convinced that Member States should provide the Court with the resources to meet its growing workload, her delegation, among others, had requested the inclusion in the 1997 agenda of the Special Committee of the item on the consequences that the increase in the volume of cases before the International Court of Justice had on the operation of the Court. It was therefore particularly grateful to the Court for having given its observations on the subject. Recognizing in that regard the Court's efforts to meet its increasing workload, as indicated in document A/53/326, her delegation had no doubt that the Court would continue to do its utmost to expedite its work and that the Special Committee, at its next session, would use those comments as a basis for its recommendations.

14. As far as the implementation of Charter provisions related to assistance to third States affected by sanctions was concerned, her delegation had endorsed the initiative of the Secretary-General, who had convened an ad hoc expert group meeting to study the matter. In its conclusions and recommendations (A/53/312), the expert group envisaged a number of practical steps to be taken sequentially and to be applicable to all future cases of economic sanctions. The proposed model was flexible in that, without undermining the effectiveness of sanctions imposed, it would permit adjustments to be made on a case-by-case basis. Without prejudice to a more detailed consideration of the substantive proposals put forward by the expert group and of the consequences of their possible implementation, the ideas put forward in the report seemed to help to improve the practical application of Article 50 of the Charter. The Committee should keep the question under review.

15. She welcomed the publication of the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council*. The efforts of the Secretariat to reduce delays in issuing those two publications, a particularly difficult task, were noteworthy. Regarding the recommendations put forward in paragraph 32 of the report of the Secretary-General (A/53/386), she observed that the efforts to update those publications should not be at the expense of the other activities requested.

16. In view of the large number of items on the Special Committee's agenda, a more methodical approach to the consideration of topics was required. Thus far, the Special Committee had considered several topics at the same time. That practice had begun to affect the effectiveness of its debates. In the light of the results obtained in recent years, the time had come for the Special Committee to take stock and to take a decision on the matter. At the same time as the much-needed review of its working methods and functioning, such an exercise would contribute to the revitalization of the United Nations. In the resolution which would be adopted at the current session, the Special Committee should be invited to undertake that exercise. Moreover, the duration of the Special Committee's session should not be fixed automatically but should remain contingent upon its programme of work. Finally, her delegation endorsed the recommendation in paragraph 167 of the Special Committee's report (A/53/13) that future sessions should be scheduled later in the first half of any given year.

17. **Mr. Tabone** (Malta) said that, since the beginning of the discussion on the future role of the Trusteeship Council in the Sixth Committee and the Special Committee pursuant to the request made by the General Assembly in its resolution 50/51 of 11 December 1995, a number of States had expressed support for the Maltese proposal that the Trusteeship Council should be made responsible for coordinating endeavours to safeguard areas of common heritage of humankind.

18. The concept of common heritage, first launched by Malta in 1997 and now universally accepted, was incorporated in a number of international conventions under the competence of international institutions, whose independent work needed to be coordinated. The protection of the common heritage of humankind required a coordinated approach that took into account the interrelationships between the different elements that made up such heritage. There was therefore a need to establish an oversight mechanism covering all areas that the United Nations held in trust for future generations: the environment, the oceans, the atmosphere and outer space. In view of its origins, the Trusteeship Council was the most appropriate organ of the United Nations to exercise that trusteeship function, as had been reaffirmed by the Deputy Prime Minister and Minister for Foreign Affairs of Malta at the current session of the General Assembly, who had stated that the ushering in of a new era of cooperation in which the notion of trusteeship assumed renewed relevance was the ideal opportunity for the international community to address, in a concerted fashion, different problems arising, in particular, from a multitude of treaties and conventions. The Secretary-General had also endorsed that approach, as attested by the fact that he had entrusted new responsibilities to the Trusteeship Council as part of his reform package.

19. Malta had also taken note of the recommendations of the United Nations Task Force on Environment and Human Settlements, whose mandate it understood as covering not only the United Nations system but also various treaty convention bodies concerning the common heritage of humankind and the environment in general. The openness of the Task Force to the proposal was encouraging. His delegation reaffirmed its intention to participate actively in the consultations to be undertaken by the Executive Director of UNEP in preparation for the next regular session of the Governing Council.

20. His delegation hoped that the recommendation of the Task Force concerning the convening of an "environmental forum" that would formulate forward-looking proposals for the protection of the global environment — encompassing, *inter alia*, the future role of the Trusteeship Council — for submission to the UNEP Governing Council and the Millennium Assembly would contribute to the consideration by Member States of additional responsibilities to be allocated to the Trusteeship Council. His delegation remained firmly convinced that that would strengthen the institutional balance provided for in the Charter of the United Nations. Although the Sixth Committee would not be able to engage in a substantive consideration of the question of reforming Council during the current session, it should nonetheless remain seized of the matter until the next session of the Special Committee or the General Assembly, with a view to considering the proposals and recommendations submitted during the "environmental forum".

21. His delegation was convinced that, however useful the recommendations of the Task Force and the UNEP consultations might be, the question under consideration merited in-depth consideration by all Member States, since it involved one of the principal organs of the United Nations. During the current session, the Committee could take note of the most recent developments that had taken place during

the past year and adopt a decision that would indicate its intention to consider the item on the future role of the Trusteeship Council in the light of the recommendations of the "environmental forum" at the forthcoming session of either the Special Committee or the General Assembly.

22. **Mr. Benitez Saenz** (Uruguay) said that his delegation had always been interested in the question of third States affected by the application of sanctions, which was addressed in the report of the Special Committee on the Charter (A/53/33). The powers which Article 50 of the Charter conferred on the Security Council, namely, preventive or enforcement measures, had not been entirely effective in achieving their intended objectives. In fact, a survey of 116 cases in which sanctions had been applied showed that it had been possible to obtain the desired results in only 41. While there was no question of eliminating or changing a mechanism which the Charter had established as a legitimate means of influencing the conduct of States, it seemed imperative to establish, parallel to the application of sanctions, automatic compensation mechanisms for third countries.

23. With regard to the maintenance of international peace and security, the documents submitted by the Russian Federation on basic conditions and criteria for imposing and implementing sanctions and other enforcement measures were also most interesting. His delegation fully endorsed the idea of assessing the socio-economic and humanitarian consequences of sanctions at the time they were implemented, and supported the statement delivered by the representative of Austria on behalf of the European Union in that connection.

24. While his delegation largely agreed with the content of the draft declaration submitted by the Russian Federation on the basic principles and criteria for the work of the peacekeeping missions and mechanisms, it believed that the Special Committee should not attempt to assume functions more appropriately dealt with by the Special Committee on Peacekeeping Operations.

25. The revised working paper submitted by Cuba on strengthening the role of the Organization merited in-depth study, since it was aimed at the democratization and strengthening of the Organization. It dealt in particular with the role of the General Assembly; his delegation, too, believed that the structure of the Organization no longer corresponded to current political realities. Like most other delegations, it believed that the Special Committee was competent to deal with the question.

26. The analysis of the proposal submitted by Sierra Leone concerning the peaceful settlement of disputes between States should be pursued in order to find the best means of implementing it. The work of the United Nations should be based on in-depth consideration of the principle of preventive diplomacy.

27. The working papers submitted by Guatemala and Costa Rica on amending the Statute of the International Court of Justice and extending its competence to disputes between States and international organizations contained excellent proposals on expanding the Court's competence. It was indeed desirable for the world's foremost judicial authority to be able to hear disputes between States and international organizations.

28. The report of the Secretary-General containing the conclusions of the meeting of the ad hoc expert group established pursuant to resolution 52/162 (A/53/312) contained extremely innovative views. However, its late distribution had prevented capitals from studying it carefully. Despite the amount of work accomplished, the possibility of formulating conclusions that would lead to realistic and practical solutions was still remote. While there was unanimous support for the principle of compensation for damage caused to third States, it would remain a dead letter in the absence of a reliable financing mechanism.

29. The proposal submitted by Mexico on the means of increasing the practical effectiveness of the International Court of Justice had led to the preparation of the report contained in document A/53/326. The Committee should analyse the comments and observations of the International Court of Justice and should seek to facilitate, inasmuch as possible, the task of the highest judicial authority.

30. His delegation supported the recommendation formulated in paragraph 167 of the report of the Special Committee on scheduling its sessions later in the year. The Special Committee should have more time to deliberate, since it had been unable to obtain concrete results on a number of items included in its agenda.

31. **Mr. Mircea** (Romania), referring first to the question of assistance to third States affected by the application of sanctions, said that his country had welcomed the adoption of resolution 51/162 of 15 December 1997, which had made it possible to obtain, fairly rapidly, very useful conclusions and recommendations by experts from a number of countries and representatives of parts of the Secretariat, the specialized agencies of the United Nations and other international organizations. In order to maintain that momentum, it was vital to fine-tune those recommendations and rapidly determine a common denominator among them that was readily adaptable to various specific situations.

32. While the recommendations of the ad hoc expert group should certainly be studied by Governments and the Secretariat, his delegation believed that the Secretariat should be encouraged to pursue the activities initiated with the convening of the expert meeting in June 1998. That idea could be reflected in the resolution to be adopted. Of particular interest was the recommendation to the effect that, in the most severe cases, the Secretary-General could appoint special representatives to assess the consequences of sanctions, in collaboration with the Governments concerned.

33. It would be simpler and more advisable, however, to involve in the assessment process the United Nations resident representatives in the affected countries. Given their experience of assessment in the countries in which they were serving, they would be able to assist quickly and at various levels with the establishment of a real dialogue between the countries affected by the sanctions and the relevant United Nations bodies. Considerable expense would thus be avoided.

34. Referring to the situation of the International Court of Justice, he said it was vital that that prestigious institution should receive at the earliest opportunity the resources it required to cope with its growing workload in what was a very delicate sphere of international life. The comments of the Court itself, contained in document A/53/326, were particularly interesting in that respect.

35. **Mr. Wilmot** (Ghana) said that he supported the recommendation by the Special Committee in paragraph 167 of its report (A/53/33) that its sessions should be scheduled later in the first half of the year to enable it to carry out its work more effectively and to allow sufficient time for careful consideration of the comments made in the Sixth Committee and assessment of the reports which the Secretary-General might be able to provide.

36. With regard to the draft declaration on the basic principles and criteria for the work of United Nations peacekeeping missions and mechanisms for the prevention and settlement of crises and conflicts, his delegation shared the view expressed in paragraph 79 of the aforementioned report concerning possible duplication or overlap, particularly with respect to peacekeeping activities and the work of other competent bodies. As to the proposal on the fundamentals of the legal basis for United Nations peacekeeping operations in the context of Chapter VI of the Charter, it was his delegation's firm belief that there must be a solid legal basis. The Special Committee should focus on the relevant legal questions, taking account of the lessons learnt from previous peacekeeping operations.

37. His delegation noted that the report of the Secretary-General on the implementation of provisions of the Charter related to assistance to third States affected by the application of sanctions (A/53/312) raised important issues, such as the problems faced by those States, the measures and methodology to employ, and the role of other countries and of the Secretariat. Ghana had, in the past, supported various resolutions seeking to minimize the harsh effects suffered by third States. It believed there was a need, particularly given the current trend of recourse to economic sanctions and the growing number of third States affected, for the Organization to find a lasting solution to the problem.

38. His delegation appreciated the analysis of the sources of hardship and the various methods of assessing the impact of sanctions recommended by the ad hoc expert group established pursuant to General Assembly resolution A/52/162. The provision of better information and early assessment for the Security Council about the actual or potential effects of sanctions on third States would be very useful. Furthermore, the ad hoc expert group was right to recommend in paragraph 34 of the report (A/53/312) the undertaking of on-site visits by ad hoc assessment missions in order to properly grasp and fully evaluate the various adverse effects. The type of assistance to be provided to third States was of particular importance. The ad hoc expert group had correctly emphasized the principle of burden-sharing and the need to explore innovative and practical measures of international assistance to affected States. Industrialized and high-income countries should assume special responsibility in that respect. His delegation hoped that they would recognize and accept that responsibility.

39. His delegation agreed with the experts that the international financial institutions, such as the International Monetary Fund and the World Bank, were well placed to assess the actual economic impact on third States of sanctions imposed by the United Nations and to provide them with the necessary financial assistance. That idea should be explored further. His delegation also subscribed to the experts' views on the role of the organs and agencies of the United Nations. The role to be played by the Secretariat was one of the crucial aspects of the report before the Committee. In paragraphs 52 and 53, the experts recommended that the Secretariat should carry out an advance assessment of the potential impact of sanctions, assist States invoking Article 50 of the Charter of the United Nations in the preparation of explanatory materials, monitor the effects of the sanctions and consult with the Security Council to enable the Council to take informed decisions.

40. The recommendation by the ad hoc expert group in paragraph 54 concerning the appointment of a Special

Representative to undertake an assessment of the actual impact of the imposition of sanctions on the affected States was interesting. The recommendation in paragraph 56 regarding the dispatch of special fact-finding or evaluation missions on the ground also merited the attention of the Special Committee and the General Assembly.

41. His delegation also subscribed to the recommendation of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization (A/53/33, para. 34) to the effect that the discussion on the various aspects of the implementation of Article 50 should be pursued, in the light of the relevant documentation. Given that the aim of sanctions was above all to modify the behaviour of a State and that they invariably affected third States, they should be imposed only as a last resort, when all the methods enshrined in the Charter had been exhausted, and in strict conformity with the Charter. They must also be limited in duration and must be lifted as soon as their primary objectives had been attained. It was important to emphasize that sanctions must not be an instrument of foreign policy aimed at changing the political, economic or social regime of another country or at retaliating against a neighbouring State or group of States.

42. Turning to the report of the Secretary-General on the consequences that the increase in the volume of cases before the International Court of Justice had on the operation of the Court (A/53/326), he said it gave the impression that the Court was overwhelmed by its workload owing to a lack of human and financial resources. The ICJ performed a vital role in resolving cases and rendering advisory opinions, as evidenced by the considerable increase in the number of disputes brought before it and the requests for advisory opinions. That increase had resulted in the lengthening of the duration of procedures. The report also drew attention to the shortages of both legal and translation staff, which had led to increased administrative costs.

43. While the Court was to be commended on the measures it had taken to make its operations efficient, it must be provided with the financial, human and logistical resources it had requested.

44. Regarding the report of the Secretary-General on the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council* (A/53/386), the lengthy delay in publishing those documents was depriving delegations and the public of an important source of information on the United Nations. His delegation urged the Secretary-General to find the resources necessary to enable him to complete the missing volumes and to make them available to delegations. In the case of the *Repertoire of the Practice of the Security Council*, he noted the progress which had recently been made. He commended the Secretary-General and expressed the hope that the next volumes of that very useful document would be published within the next two years.

45. **Mr. Obeid** (Syrian Arab Republic) pointed out that the question of assistance to third States affected by sanctions was more important than ever, in that the use of sanctions seemed to be becoming more and more frequent even though it was not justified except in very specific cases, after all other peaceful, political and diplomatic means had been exhausted. Sanctions should be imposed in such a way that they did not have excessively harmful consequences, especially for third States. Moreover, the criteria for imposing them should be clear and should not be selective or based on political considerations. When sanctions were indeed imposed, their short- and long-term effects should be examined and the suffering of civilian populations should be taken into account. Indeed, the objective of sanctions should not be to punish, but to change conduct that was found wanting. Sanctions should therefore be lifted as soon as the threat that justified them was out of the way. That was why the measures which a State subjected to sanctions must take in order to have them lifted should be specified.

46. His delegation believed that Article 31 of the Charter, which guaranteed any Member of the Organization that was not a member of the Security Council the right to participate, without vote, in the deliberations of the Security Council if the interests of the Member were specially affected, should be effectively applied.

47. His delegation had taken note with great interest of the important revised proposal submitted by the Russian Federation, which contained statistics on sanctions.

48. Also, he had not forgotten that the heads of State and Government of the Movement of Non-Aligned Countries, in the Declaration which they had adopted in Durban in September 1998, had said that they were extremely concerned by the sanctions regime and by the way Article 50 was being applied. They had also mentioned the possibility of establishing a fund to assist third countries adversely affected by sanctions.

49. The Syrian delegation supported the proposals by Cuba, which were fully in line with the restructuring and democratization process under way in the Organization. Similarly, it subscribed to the proposal aimed at strengthening the role of the United Nations in the maintenance of international peace and security.

50. It would be premature to dissolve the Trusteeship Council and to make the consequential amendment to the Charter. The Trusteeship Council was a body that had not completed its mandate, in that there were still some Non-Self-Governing Territories remaining. His delegation also supported the working papers submitted by Guatemala and Costa Rica in the belief that the International Court of Justice should be provided with the human and material resources it needed. His delegation agreed that the sessions of the Special Committee should be held in the spring, but believed that it would not be desirable to shorten their duration.

51. **Ms. Ramoutar** (Trinidad and Tobago) said that she was satisfied with the way the Special Committee had studied the proposal by the Russian Federation on the provisions of the Charter concerning assistance to third States affected by sanctions. In her delegation's opinion, sanctions should come with a precise timetable and should not be used unless all other peaceful means had been exhausted. In that connection, her delegation welcomed the fact that the report of the expert group had appeared in print and called for a method to be developed of assessing the effects of sanctions on third countries in advance of their imposition.

52. Her Government, concerned by the difficulties currently facing the International Court of Justice, hoped that the competent body, the Fifth Committee, would take appropriate steps to provide the Court with the human and material resources it needed.

53. Like other delegations before it, her delegation regretted the delays in publishing the *Repertory of Practice of United Nations Organs* and the *Repertoire of Practice of the Security Council*. She counted on the necessary steps being taken to ensure that those publications, which were very useful, would appear regularly.

54. Her delegation favoured holding the sessions of the Special Committee in the spring.

55. **Mr. Zhdanovich** (Belarus) said that he had given his full attention to the work the Special Committee had done on the question of assistance to third countries affected by sanctions. It would be desirable for the Special Committee to coordinate its activities with those of other bodies dealing with such issues, particularly the Security Council. That said, it remained up to the Special Committee to decide.

56. The question of assistance to third countries affected by sanctions could not be settled without good will from States. The resolutions which the General Assembly had adopted on the subject were more about procedure than substance, and were merely the first steps in the quest for an assistance mechanism for third countries. His delegation believed that it was up to the Special Committee to solve the specific problems which arose, and that it was possible to do so without impairing the effectiveness to the sanctions regime. The Security Council should be careful to take into account all the consequences of its actions. In some cases, it would be desirable for the Security Council and the Secretary-General to appoint a special representative who would be responsible for cooperation with the targeted State and for monitoring the impact of sanctions on third countries. The United Nations funds and programmes, in cooperation with other intergovernmental bodies, should find ways to provide better-targeted aid to the States concerned.

57. His delegation believed also that the criteria for applying sanctions should be specified: the Security Council must determine that international peace and security were indeed threatened, and sanctions must be adopted only as a last resort and for a specified period. The Belarusian delegation supported the working paper that had been submitted on the subject.

58. *Mr. Mochochoko (Lesotho), Vice-Chairman, took the Chair.*

59. **Mr. Choe Myong Nam** (Democratic People's Republic of Korea) said he wished to revert to an earlier statement by the representative of the United States which had sharply criticized the position of the Democratic People's Republic of Korea concerning command of forces stationed in Korea. Contrary to what the representative of the United States had claimed, they were not under United Nations command. The forces in question had been placed under the command of the United States, which was improperly using the name of the United Nations to legitimize their presence in South Korea. The delegation of the Democratic People's Republic of Korea believed that measures must be taken to resolve the situation.

60. **Mr. Arbogast** (United States) said he would continue to reject the statements by the representative of the Democratic People's Republic of Korea, which contained not facts but allegations.

61. **Mr. Choe Myong Nam** (Democratic People's Republic of Korea) reiterated his position and said that his Government would maintain that position so long as the United States kept command of forces stationed in Korea while claiming that they were United Nations forces.

62. **The Chairman** announced that a draft resolution would be issued under the symbol A/C.6/53/L.3 and invited its sponsors to explain its contents.

63. **Mr. Korzachenko** (Ukraine) presented the major outlines of the draft resolution entitled "Implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions", highlighting the differences between the draft resolution and the previous resolution of the General Assembly on the subject (resolution 52/162). He announced that the text of the draft resolution would be available at the meeting the following day. He expressed the hope that it would be possible to adopt the draft by consensus, as had been the case in previous years.

The meeting rose at 5.10 p.m.

United Nations A/C.6/53/SR.9

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Chairman: Mr. Enkhsaikhan ..... (Mongolia)

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98-81778 (E)

The meeting was called to order at 10.20 a.m.

Agenda item 153: Establishment of an international criminal court (A/53/189 and 387)

1. **The Chairman** recalled that after laborious five-week negotiations the United Nations Diplomatic Conference of Plenipotentiaries had taken the giant step of adopting the Rome Statute of the International Criminal Court (A/CONF.183/9). He paid tribute to those who had contributed to a landmark achievement.

2. **Mr. Sucharipa** (Austria), speaking on behalf of the European Union, the associated countries Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia, and, in addition, Iceland, said that the European Union was extremely satisfied with the outcome of the Diplomatic Conference. The adoption, by an overwhelming majority of the States participating in the Conference, of the Statute of the International Criminal Court represented a great achievement. A major gap in the international legal order had been closed with the agreement on the creation of a permanent court designed to prosecute and try the perpetrators of heinous crimes. Such an institution would make the world a safer place. The purpose of the Court was not only to punish those who committed crimes but through its mere existence to deter individuals from committing crimes in the first place. The culture of impunity had to end. Indeed, the Court would add a new dimension to international relations by reinforcing individual accountability.

3. The European Union had consistently and strongly supported the idea of creating the Court; all the States members of the Union had voted in favour of the Statute at the end of the Diplomatic Conference and 13 had already signed the Statute. All the States would do their best to proceed to ratification without delay. For the Court to succeed in its task it needed the widest support of the international community and he hoped that all States, whether or not they voted for the adoption of the Statute, would recognize the benefits of a universal criminal court.

4. In the same spirit the Union called for the Preparatory Commission to be convened promptly. If the target date of 30 June 2000 for the establishment of the Court was to be met, much preparation of additional legal instruments – especially the Rules of Procedure and Evidence and the Elements of Crimes – would be required, with attention being paid at the same time to the principle of complementarity with national jurisdictions. Given the volume and urgency of its work, no effort should be spared to facilitate the Preparatory Commission's activities. It should be convened for three sessions during 1999 and then, if necessary, reconvened in 2000. Such a schedule might seem ambitious, but it was absolutely necessary.

5. **Mr. Politi** (Italy) said that the adoption and opening for signature of the Statute of the International Criminal Court represented a milestone in the development of international criminal law. The Diplomatic Conference had had two purposes: to create an institution that would deter the commission of crimes that offended the very conscience of mankind and to end the impunity too often granted to the perpetrators of such crimes. Those goals had become particularly urgent with the return of the spectre of unspeakable atrocities that everyone had hoped had disappeared after the Second World War. The creation of the two ad hoc tribunals had been admirable but insufficient; and a permanent international criminal court had been strongly demanded by a large majority of States. Non-governmental organizations had also contributed to the process: over 200 had sent representatives to the Diplomatic Conference.

6. The text of the Statute inevitably reflected a number of compromise solutions to crucial issues. Overall, however, his delegation considered the text satisfactory from a substantive point of view. The Court would be competent to adjudicate so-called "core crimes" under general international law, although in the case of aggression the Court's jurisdiction would have to await an approved definition of the crime. The definitions of genocide, war crimes and crimes against humanity, however, were extremely comprehensive, reflecting the most recent developments in international law and practice.

7. A second achievement was that the Court's complementarity with respect to national jurisdictions was correctly established on the basis of criteria allowing the Court to intervene when national systems of criminal justice were unavailable or unwilling to prosecute and punish those responsible for crimes covered by the Statute.

8. Thirdly, recourse to the Court was not limited to States. The Prosecutor could initiate investigations *proprio motu*, on the basis of information received from any source. That underlined the Court's character as a body acting in the interest of the entire international community. Since the Security Council could also use the Court, the need to establish ad hoc tribunals would be obviated.

9. Fourthly, the Court had "automatic jurisdiction" over the crimes covered by the Statute: in other words, its jurisdiction was not conditional on specific acceptance by the States parties concerned, so long as the accused was a

national of a Party to the Statute or of a State that had accepted the competence of the Court. His Government would have preferred wider criteria but he noted that article 124 of the Statute, allowing States parties to declare their non-acceptance of the Court's jurisdiction over war crimes for seven years, was provisional and he was confident that it would be deleted by the Review Conference. In short, while concessions had been necessary from all sides, the Court remained a solid institution with the necessary effectiveness and independence. Those characteristics must be preserved.

10. It was excellent that only three months after its adoption 58 States had signed the Statute. Further signatures would signal widespread support for the Statute and form a good basis for a quick ratification process. In that context, he said that Italy had started the ratification procedure on 8 October. A rapid entry into force of the Statute would be beneficial to the entire international community, whose support was essential for the effective performance of the Court's functions.

11. The Preparatory Commission should be convened as soon as possible in New York in order to elaborate a number of instruments to integrate or accompany the Statute, particularly the Rules of Procedure and Evidence, the Elements of Crimes and the definition of the crime of aggression. A minimum of eight weeks of meetings was required in 1999 and, if necessary, three additional weeks before June 2000. The Commission should be provided with the required resources and services. Non-governmental organizations should be allowed to participate in its work under the same conditions as they had at the Diplomatic Conference. It was essential to build a lasting edifice against impunity on the foundations that had been laid in Rome, the cradle of law.

12. **Mr. Maqungo** (South Africa), speaking on behalf of the Southern African Development Community, said that the Community was concerned that the achievement of an African renaissance had been delayed by conflict in various regions of Africa, including its own. With the entrenchment of respect for the rule of law, however, the Community was hopeful that Africa would wean itself from conflict and the culture of military coups. It therefore welcomed the adoption of the Statute of the International Criminal Court, which would serve notice to those responsible for acts of genocide and other serious crimes that the culture of impunity was at an end. It sent a message that the international community would no longer stand by and watch the perpetration of horrendous crimes.

13. The Statute would also serve as a reminder that even during armed conflict the rule of law must be upheld. For example, it was unlawful for children under the age of 15 to be robbed of their childhood by being recruited to national armed forces, for attacks to be directed at civilian populations or individuals not taking a direct part in hostilities, for a combatant who had surrendered, having laid down his arms, to be killed or wounded and for the starvation of civilians to be intentionally used as a method of warfare. Any of those acts was a war crime and would be punished.

14. Much remained to be done before the Court could begin to function. First, the necessary number of ratifications had to be attained. States which still entertained misgivings about the Court should be aware that its strengths or weaknesses were not solely dependent on the Statute, so fears on the part of any State that the Court might be used against it could be laid to rest by the participation of that State in the process of establishing the Court. It was to be hoped that States which had voted against the adoption of the Statute would put aside their misgivings and continue to offer their valuable contributions to the establishment of the Court.

15. The Southern African Development Community echoed the recent call by the Movement of Non-Aligned Countries, meeting in Durban, for the early establishment of the Preparatory Commission. The Community also called for the establishment of a trust fund to enable a large number of States to participate in the Commission: it was vital for the universality, effectiveness and impartiality of the Court that the entire international community should contribute to its establishment and, ultimately, its functioning. The States members of the Community hoped to exchange views with other delegations and non-governmental organizations on what technical assistance might be provided to States wishing to ratify the Statute, taking into account the national laws that would have to be promulgated to give effect to the obligations arising from being a State party to the Statute.

16. **Mr. Chimimba** (Malawi) said that a momentous task had been achieved with the adoption of the Rome Statute of the International Criminal Court, which, despite its shortcomings, unequivocally signalled the political will to bring an end to impunity. It was clear from the Final Act of the Conference, however, that many other issues remained.

17. Having fully associated himself with the statement made by the South African representative on behalf of the countries of the Southern African Development Community, he stressed that the process which preceded the adoption of the Statute was as significant as the outcome was

monumental, since the establishment of an international criminal court had been a universal goal.

18. Secondly, it was essential to ensure that the Preparatory Commission had the time and resources needed for the successful completion of its mandate, a factor which the General Assembly should take into account when drafting the relevant resolution.

19. Thirdly, the establishment of a trust fund for the continued participation of as many countries as possible in the work of the Preparatory Commission would do much to further universality and the progressive development of international law, in which context he also supported the participation of both intergovernmental organizations, non-governmental organizations and other entities.

20. He confirmed that Malawi would shortly be in a position to sign and ratify the Statute and urged other States to do likewise as soon as possible, as a fully operational international criminal court would be a befitting legacy to a world that was still despairing of justice and fairness in conditions of peace and security.

21. **Mr. Yañez-Barnuevo** (Spain) said that while the statement made by the representative of Austria on behalf of the European Union had expressed the common position of all States members of the European Union and thus also of his country, his Government wished to underscore its satisfaction at the adoption and opening for signature of the Rome Statute of the International Criminal Court. The Statute represented the realization of a long-held aspiration, namely, to strengthen the principles and purposes of the United Nations, particularly those relating to international peace and security, and to establish human rights and justice, through joint action by States to abolish impunity in respect of those crimes which, by virtue of their gravity and consequences, affected the international community as a whole.

22. While the text of the Statute was not satisfactory in every respect, it was a cogent and well-grounded document which made possible the establishment and coming into operation of a permanent international criminal court of a universal character. Such a court would be independent and truly effective, provided that it received the necessary support and cooperation from States.

23. His Government, which had been one of the first signers of the Statute, noted with satisfaction that the number of signatories was already at 58, which augured well for the prompt entry into force of the Statute and the subsequent bringing into operation of the Court. Another hopeful indication was the resolution adopted by the Inter-Parliamentary Union in Moscow on 12 September 1998, urging national parliaments to take the measures needed for the prompt and universal ratification of the Statute.

24. As indicated in resolution F annexed to the Final Act of the Rome Conference, the Preparatory Commission linked to the United Nations system must be convened as soon as possible. His delegation believed that the convening of the Commission should be approved at the current session of the General Assembly, that the Commission should have at its disposal the meeting time in 1999 and the secretariat services which it required, and that every effort should be made to finalize the preparatory work, including the draft texts of the Rules of Procedure and Evidence and of the Elements of Crimes, before 30 June 2000, as proposed by the Rome Conference.

25. His Government intended to participate actively in the work of the Preparatory Commission, and had taken the first steps towards completion of the formalities for the ratification of the Statute.

26. **Mr. Chowdhury** (Bangladesh) said that the adoption of the Statute of the International Criminal Court represented a giant leap forward in the establishment of justice and human rights worldwide.

27. His country, which had been a victim of genocide during its liberation struggle, took great satisfaction in the observation that the Statute had discarded the age-old concept of impunity under the shield of State. While his Government would have preferred the International Criminal Court to be more independent and to have jurisdiction over such crimes as the use of nuclear weapons and weapons of mass destruction, it nonetheless believed that if the Court was allowed to work to its full capacity in conformity with the Statute, it had a great potential to promote human rights around the world.

28. Work on the establishment of the International Criminal Court remained to be completed. The note by the Secretary-General (A/53/387) drew attention to resolution F adopted by the Conference, which established the Preparatory Commission for the International Criminal Court. His delegation would welcome an opportunity to participate in the Preparatory Commission and believed that it should be convened no later than the first trimester of 1999. Bangladesh also hoped that the draft texts of the Rules of Procedure and Evidence and of the Elements of Crimes would be finalized before 30 June 2000. His delegation supported the clause in resolution F requesting the Secretary-General to provide to the Commission such secretariat services as it might require.

29. His Government expressed its appreciation to the contributors to the trust fund which had supported the participation of the least developed countries in the Preparatory Committee and the Conference of Plenipotentiaries, and called for the establishment of a similar trust fund to ensure the participation of the least developed countries in the Preparatory Commission.

30. **Mr. Qu Wensheng** (China) said that the establishment of an international criminal court had been a goal of the international community for nearly a century. His Government had always maintained that an international criminal court should be rooted in reality, not an ideal, and that its statute should accurately and fully embody international political realities and the current state of development of international law. It was regrettable, therefore, that the Rome Conference had been unable to reach consensus on a number of important questions and had had to adopt the Statute on the basis of a vote.

31. Some of the provisions of the Statute did not take into account the legitimate rights and interests of countries. Moreover, the manner in which the Conference had conducted its work had not been the best way to ensure the participation of all States on a basis of equality, democracy and transparency. A majority of countries had been excluded from the negotiations concerning key articles. Some draft articles had not even been discussed in an open forum and had been circulated to delegations only at the last minute before the vote. Owing to time pressure, the text of the Statute finally adopted was riddled with deficiencies that should have been remedied. Like other countries, China looked forward to the early establishment of the International Criminal Court; however, the quality of the document and the democracy and transparency of the working methods of the Conference should not have been sacrificed to the pressure to meet deadlines.

32. His delegation had serious reservations concerning the universal jurisdiction provided for in the Statute, which directly infringed on the judicial sovereignty of States. Under article 12, the Court could exercise its jurisdiction with respect to the crimes concerned if one or more of the following States were parties to the Statute or had accepted the jurisdiction of the Court: (a) the State on the territory of which the conduct in question had occurred (the territorial State); (b) the State of which the person accused of the crime was a national. In his delegation's view, that provision posed several problems.

33. First, under the current rules of international law, far more States than those in the two categories referred to had equal and parallel jurisdiction over the crimes concerned, including States detaining the suspects and States of which the victims were nationals. Article 12 in effect negated the equal jurisdiction of the latter States, thus infringing on their judicial sovereignty. In short, States not parties to the Statute which had jurisdiction over the relevant crimes under current international law would no longer be able to invoke their non-acceptance of the Court's jurisdiction in order to prevent the Court's interference with their judicial sovereignty. That represented a serious blow to the current system of international judicial assistance in criminal matters.

34. Secondly, the provisions concerning jurisdiction in the Statute could create a situation in which non-parties assumed more obligations than parties. For example, under article 124, a State, on becoming a party to the Statute, could declare that, for a period of seven years after the entry into force of the Statute for the State concerned, it did not accept the jurisdiction of the Court with respect to war crimes. Under article 121, paragraph 5, any amendment to articles 5 to 8 of the Statute would not have effect with regard to States parties that had not accepted the amendment. States parties could invoke the two provisions referred to in order to reject the Court's jurisdiction over the crimes in question. On the other hand, as long as the territorial State or the State of nationality of the accused was a State party or had accepted the Court's jurisdiction, a non-party would not be able to invoke the same grounds to refuse the Court's jurisdiction over the crime in question.

35. Thirdly, there were conflicts between articles 11 and 12. On the one hand, article 11, paragraph 2, provided that the Court could exercise its jurisdiction only with respect to crimes committed after the entry into force of the Statute for that State, unless that State had declared its acceptance of the Court's jurisdiction. On the other hand, article 12 provided that even if a State was not a party to the Statute and had not accepted the Court's jurisdiction, the Court could still exercise its jurisdiction with respect to the crime concerned if the territorial State or the State of nationality of the accused was a party to the Statute or had accepted the jurisdiction of the Court. The question arose as to which article the Court would apply in exercising its jurisdiction. It was also unclear whether, if a non-party was both the territorial State and the State of nationality of the accused, it could take advantage of article 11, paragraph 2, to become a party to the Statute and escape the jurisdiction of the Court.

36. With regard to the definition of crimes, China had doubts about the inclusion of domestic armed conflicts under the Court's jurisdiction within the definition of war crimes, because the provisions of international law concerning war crimes committed during such conflicts were still incomplete. The provisions of Geneva Protocol II Additional

to the Geneva Conventions of 12 August 1949 were very weak in comparison with those of Additional Protocol I and the question of whether some of those provisions had acquired the status of customary international law was still in debate. The definition of war crimes committed during domestic armed conflicts in the Statute had far exceeded not only customary international law but also the provisions of Additional Protocol II.

37. With regard to crimes against humanity, in accordance with customary international law, they were crimes committed during wartime or during an extraordinary period related to wartime. Both the Nürnberg Charter and the Statute of the International Criminal Tribunal for the Former Yugoslavia contained provisions explicitly defining war crimes as crimes committed during armed conflicts. The Statute, however, failed to link those crimes to armed conflicts and thereby changed the major attributes of the crimes. In listing specific acts constituting crimes against humanity, the Statute added a heavy dose of human rights law. Hence, crimes against humanity as defined in the Statute represented "new wine in old bottles". His delegation believed that what the international community needed at the current stage was not a human rights court but a criminal court that punished international crimes of exceptional gravity. The injection of human rights elements would lead to a proliferation of human rights cases, weaken the mandate of the Court to punish the most serious crimes and thus defeat the purpose of establishing such a court.

38. The crime of aggression was dealt with in the Statute in a highly ambiguous manner. His delegation had no objections to the crime of aggression being included within the Court's jurisdiction provided that a proper definition of the crime could be arrived at. As such a definition had not yet been agreed on, the inclusion of the crime in the Statute would not only render the Court incapable of exercising its jurisdiction over such crimes, but would further complicate the definition of aggression. Such a move was deeply regrettable.

39. With regard to the approach for accepting the jurisdiction of the Court, a number of countries were in favour of establishing a mechanism that would allow States, in becoming parties to the Statute, to choose whether they would accept the Court's jurisdiction over all crimes or only over certain crimes. His delegation had always been of the view that that such a mechanism should be one of the approaches for accepting the jurisdiction of the Court, especially since countries still had differences over which crimes should fall under the jurisdiction of the Court and how those crimes should be defined. Nevertheless, article 12, paragraph 1, ruled out the opt-in approach. As a result, many countries might be prevented from becoming parties to the Statute.

40. The power of the Prosecutor to initiate investigations *proprio motu* was a controversial issue. In the first place, article 15 of the Statute stipulated that the Prosecutor could initiate investigations *proprio motu* on the basis of information on crimes within the jurisdiction of the Court. As a result of a compromise reached during the negotiations, there was no modifier next to the word "information" in the article. Nevertheless, the implied meaning of "information from any sources" was not thereby weakened. The article empowered individuals, non-governmental organizations and other bodies to bring cases before the Court and gave them virtually the same right as States parties and the Security Council to trigger the Court's jurisdiction mechanism. As a result, the Court would be faced with a huge number of complaints from individuals and non-governmental organizations, and therefore would not be able to concentrate its limited resources on dealing with the most serious international crimes.

41. Secondly, if the Prosecutor could initiate investigations *proprio motu* on the basis of such information, that meant that the authority of the Prosecutor was so extensive that he or she could influence or interfere directly with the judicial sovereignty of a State. Although a Pre-Trial Chamber was provided for in the Statute with a view to preventing the abuse of authority by the Prosecutor, in order for such a mechanism to be effective, either the members of the Pre-Trial Chamber, or the members of the Chamber and the Prosecutor, should be the product of different legal systems and different political and cultural backgrounds. The Statute, however, contained no such provision. It was possible, therefore, that both the members of the Pre-Trial Chamber and the Prosecutor might come from the same region or share the same legal, political or cultural background. That would neutralize the Pre-Trial Chamber's check-and-balance role.

42. Lastly, the principle of complementarity was a fundamental basis for the establishment of the Court. During the years of negotiations, a consensus had been reached as to the primary role that national judicial systems played in the prevention and punishment of crimes and the maintenance of social order. The International Criminal Court had only a complementary role to play in the event that a State's judicial system collapsed. Some provisions of the Statute, however, hardly reflected the principle of complementarity; on the contrary, the Court seemed to have become an appeals court sitting above the national court. As stipulated in article 17, the Court could judge ongoing legal proceedings in any State, including a non-party, in order to

determine whether the intention existed to shield the criminal or whether the trial was fair, and could exercise its jurisdiction on the basis of that decision. In other words, the Statute authorized the Court to judge the judicial system and legal proceedings of a State and negate the decision of the national court. What was worse, the criteria for determining whether a trial was fair or whether a State had the intention to shield a criminal were very subjective and ambiguous. For instance, under article 17, paragraph 2, the normal legal proceedings of a State might be determined to be unfair or intended to shield the criminal. It was highly possible that such a provision would be abused for political purposes. In Rome, his delegation had worked hard for the adoption of a more objective set of criteria, but without success.

43. Failure to solve the problems outlined above would inevitably obstruct the process of ratification and accession to the Statute, thereby affecting the authority and universality of the Statute. His delegation believed that instead of sidestepping those problems, the international community should find a proper solution on the basis of democracy and transparency. The draft resolution adopted on the item at the current session should be balanced and should objectively and accurately reflect the comments of all States, not just one voice and one view.

44. **Mr. Koffi** (Côte d'Ivoire) said that his country had been involved in the efforts to establish an international criminal court since the creation of the Preparatory Committee. His Government supported any instrument or institution that could help to create an atmosphere conducive to peace and justice. The International Criminal Court was such an institution. While it might not eliminate all the barbarities perpetrated systematically and on a large scale, it would put an end to impunity by imposing the penalties which such acts warranted.

45. Notwithstanding the legal and political progress which the establishment of the Court represented, his Government was not yet satisfied. The international community had failed in its duty, to establish a definition of and acceptable criminal penalties for the most heinous of all crimes, namely, the crime of aggression. That goal had been within reach on the basis of the consensus proposals put forward by the German delegation and many others which had participated in the gruelling negotiations, and his delegation expressed its appreciation to them.

46. All was not lost, however; the forthcoming Preparatory Commission or the review conferences could go beyond merely mentioning the crime of aggression and could elaborate full and punitive provisions against it. History might otherwise accuse the international community of wishing to combat evils without seeking to eradicate their roots. In that spirit, his Government had signed the Statute of the International Criminal Court on 7 October 1998 in Rome. It was prepared to participate in the work of the Preparatory Commission on the basis of transparency and consensus. His delegation called upon the States Members of the United Nations to devote their joint efforts to the early entry into force of the Statute of the Court.

47. **Miss Ramoutar** (Trinidad and Tobago), speaking on behalf of the Caribbean Community (CARICOM) member States that were also Members of the United Nations, said it was most gratifying that after many years of indecision, the international community should have finally convened the Diplomatic Conference for the Establishment of an International Criminal Court, which had met in Rome and adopted the Statute of the International Criminal Court. It was regrettable, however, that the text of the Statute should not have been adopted by consensus.

48. CARICOM was aware of the number of difficult and controversial issues that had had to be resolved, such as the independence of the Prosecutor, the principle of complementarity, the definition of crimes and the relationship of the Court to the United Nations. CARICOM was disappointed, however, that two issues of particular concern to the region had not been included in the Rome Statute, namely, the extension of the jurisdiction of the Court to the crime of illicit traffic in narcotic drugs and psychotropic substances and the question of the death penalty as a penalty available to the Court. The issue of the death penalty should be revisited and included as a priority on the agenda of the first Review Conference.

49. CARICOM was optimistic that at the first Review Conference, an acceptable definition would be drafted for the crime of illicit traffic in narcotic drugs and psychotropic substances. The draft definition submitted by CARICOM States at the Diplomatic Conference, with the support of many other States, could form the basis of those discussions.

50. The CARICOM States were concerned that the provision wherein a State, on becoming a party to the Statute, could opt out for a period of seven years from the Court's jurisdiction over war crimes committed by its nationals or on its territory would seem to condone impunity for war crimes and could impede the Court's ability to function. They were equally uncomfortable with the provision according to which the Court could not exercise jurisdiction unless the State of nationality of the accused or the State where the crimes had taken place had ratified the Statute.

51. CARICOM was aware that a number of instruments still needed to be negotiated and approved, including the Rules of Procedure and Evidence, and therefore supported and recommended the early convening of the Preparatory Commission which would be responsible for drafting those texts. They stood ready to cooperate with all States to ensure the successful adoption of all the instruments necessary to enable the Court to commence its functions. The signature and ratification of the Rome Statute by the required number of States must be accomplished in the shortest possible time if the Court was to be firmly established. There must also be adequate and reliable funding to support the Court in the fulfilment of its mandate, once it was operational.

52. **Mr. Scheffer** (United States of America) said that the treaty negotiated recently in Rome, which a large number of Governments had already signed, had many provisions that the United States supported; nevertheless, in its present form, it contained flaws that rendered it unacceptable.

53. The United States had hoped that the Rome conference would achieve a consensus on the resolution adopting the treaty. The Clinton Administration had a record that pointed towards that objective, and had ensured that United States support for the two existing international criminal tribunals for the former Yugoslavia and Rwanda was second to none. Many other Governments had also made important contributions to the success of the tribunals. But not only did the United States provide both tribunals with significant financial resources, it also used its diplomatic resources, made in-kind contributions of personnel and equipment, offered the tribunals important information, and even brought United States military capabilities to bear to ensure that the tribunals were effective. Thus, the United States had hoped in Rome for a consensus that would allow it to begin planning the kind of support that the permanent court would need if it was also to be effective. So long as the United States was unable to join the treaty, it would be unrealistic to expect it to give the Court that level of support. His Government was concerned that without the United States, the effectiveness of the permanent international criminal court might fall short of its potential.

54. All of the States represented in Rome had shared the common goal that an international court should be able to prosecute tyrants who committed mass murder, mass rape, or mass torture against their own citizens, while at the same time not inhibiting States from contributing to efforts to help protect international peace and security. The irony of the Rome outcome on article 12 was that it left open the potential for situations such as the following. A State not a party to the treaty launched a campaign of terror against a dissident minority inside its territory. Thousands of innocent civilians were killed. International peace and security were imperilled. The United States participated in a coalition to use military force to intervene and stop the killing. Unfortunately, in so doing, bombs intended for military targets went astray. A hospital was hit. An apartment building was demolished. Some civilians being used as human shields were mistakenly shot by United States troops. The State responsible for the atrocities demanded that United States officials and commanders should be prosecuted by the International Criminal Court. The demand was supported by a small group of other States. Under the terms of the Rome treaty, in the absence of a Security Council referral, the Court could not investigate those responsible for killing thousands, yet the United States officials, commanders and soldiers could face an international investigation and even prosecution.

55. The complementarity regime had often been offered as the solution to such a dilemma. However, complementarity was not the answer, to the extent that it involved States investigating the legality of humanitarian interventions or peacekeeping operations that they already regarded as valid official actions to enforce international law. The Court could decide there was no genuine investigation by a 2-to-1 vote. The United States had other concerns of principle about the relationship between article 12 and international law. His Government's fundamental concern was that, in the absence of a Security Council referral, the Court would be able to assert jurisdiction over non-party nationals.

56. Another fundamental concern of the United States Government was the way in which the Rome treaty provided for the adoption and application of amendments to crimes. In its current form, the amendment process for the addition of new crimes to the jurisdiction of the Court or revisions to the definitions of existing crimes in the treaty would create an extraordinary and unacceptable consequence. After the States parties decided to add a new crime or change the definition of an existing crime, any State that was a party to the treaty could decide to immunize its officials from prosecution for the new or amended crime. Officials of non-parties, however, were subject to immediate prosecution. For a criminal court, that was an indefensible overreach of jurisdiction.

57. Likewise, there would be some who would regard the idea that States parties could opt out of prosecution for war crimes for seven years, while non-parties could not, as an incentive to join the court. Criminal jurisdiction – individual criminal jurisdiction – should not be played with in that way.

58. Another concern which his Government had was that the treaty included provisions relating to an undefined crime of aggression. Aggression carried with it an extremely problematic process of definition. How that would be resolved was too unclear for so important an issue.

59. Having considered the matter with great care, the United States would not sign the treaty in its current form. Nor was there any prospect of its signing the current treaty text in the future.

60. There were a number of important issues that the Sixth Committee would address in its resolution on the Preparatory Commission. It had been agreed in Rome that the sessions of the Preparatory Commission could be funded from the United Nations annual budget. Those sessions, however, must be absorbed so that the regular budget of the United Nations did not exceed US$ 2.533 billion.

61. The Preparatory Commission would consider many important issues, including the Elements of Crimes and the Rules of Procedure and Evidence. As a signatory of the Final Act in Rome, the United States was entitled to participate in the Preparatory Commission. It was also essential, however, that the Preparatory Commission should afford the opportunity for Governments to address their more fundamental concerns. When building an international institution that was intended to last for the ages, a solid foundation of support was essential.

62. It had been suggested that the United States should exercise "benign neglect" or that it should wait until the Review Conference seven years after entry into force of the treaty – a conference in which the United States, as a non-party, would not be entitled to participate fully. His Government had rejected both of those options. Another option would be to oppose the treaty in a variety of ways. His Government preferred, however, a policy of positive and forward-looking engagement in the hope of ensuring a treaty that would stand for values and goals common to all Member States.

63. In conclusion, he stressed that the advantages deriving from strong United States support for the International Criminal Court should not be sacrificed for a concept of jurisdiction that might not be effective and even ran the risk of dividing the international community on an issue – international justice – that would be difficult enough to achieve if all members were together. The credibility of the Court would be demonstrated in how it built its relationships with sovereign Governments and in how well it supported, and was supported by, the requirements of international peace and security. The international community's willingness and ability to prevent and, where necessary, respond effectively to atrocities was of fundamental importance to all concerned. The opportunity remained for the International Criminal Court to achieve its full potential. The United States held the stakes for international peace, security and justice to be too great to accept anything else.

64. **Mr. Slade** (Samoa), speaking on behalf of the members of the South Pacific Forum that were represented at the United Nations said that they warmly welcomed the adoption of the Rome Statute of the International Criminal Court, which was an important step towards ending the culture of impunity and stood as a strong deterrent to potential perpetrators of the most serious crimes of concern to the international community as a whole.

65. He welcomed the news that 58 States had already signed the Statute and urged other States to demonstrate their commitment by signing the Statute at the earliest possible time and by setting in train the domestic processes required for ratification.

66. He looked forward to the establishment of the Preparatory Commission that would prepare proposals for practical arrangements for the establishment and coming into operation of the Court. He noted in particular that the Rules of Procedure and Evidence and the Elements of Crimes were required to be finalized by 30 June 2000. The work of the Preparatory Commission must be accorded a high priority in the work of the Sixth Committee, and it was of great importance that adequate time and resources should be provided to enable the Preparatory Commission to fulfil its important mandate.

67. **Mr. Salleh Said** (Malaysia) said that, in principle, Malaysia supported the expeditious establishment of a truly independent international criminal court and was pleased that the Rome Statute of the International Criminal Court had accommodated some of its concerns.

68. His delegation endorsed the position of the Movement of Non-Aligned Countries concerning the need to ensure the coming into operation of the International Criminal Court without undue delay.

69. Referring to the proposals on aggression to be formulated by the Preparatory Commission in accordance with resolution F of the Rome Conference, he recalled Malaysia's previously expressed concern over inclusion of the crime of aggression within the jurisdiction of the Court and stressed that the circumstances which gave rise to individual criminal responsibility should be specifically laid down, as not every act of State amounting to a crime of aggression entailed such responsibility. His delegation therefore looked forward to a mutually acceptable resolution

of the issue which would increase the willingness of States to ratify the Statute.

70. In addition, given his country's stated position on the question of including the death penalty within the jurisdiction of the Court, his delegation welcomed the declaration of the President of the Conference that the exclusion of the death penalty from the Statute had no bearing on the legislation and practice of a State in that connection and should not influence the development of customary international law.

71. Similarly, given his delegation's belief that the so-called treaty crimes were more effectively dealt with under the national criminal justice system of the relevant State, it endorsed the call for the proposed Review Conference. However, the inclusion of such crimes in the list within the jurisdiction of the Court should not overburden its financial obligations, manpower and other resources.

72. His Government had already signed the Final Act of the Conference and was currently studying the Statute with a view to its signature and ratification.

73. **Mr. Mwakawago** (United Republic of Tanzania), having associated himself with the statement made by the South African representative on behalf of the countries of the Southern African Development Community, said that the adoption of the Rome Statute of the International Criminal Court was a welcome step towards bridging a critical gap in international criminal law and international humanitarian and human rights law. The establishment of the Court, which represented the resolve to ensure that all individuals were accountable and punishable, would also provide concrete reassurance concerning the need to respect and protect humanity.

74. However, the failure of the Rome Statute to provide for the attribution of criminal responsibility to legal persons was a serious and regrettable flaw that demanded redress. The genocide in Rwanda, for instance, could not have occurred so swiftly without the aiding and abetting of such entities, whose role had been shamefully disregarded in order to protect corporate interests. His delegation also regretted the outcome concerning the crime of aggression, but was hopeful that the Court would eventually be able to exercise fully its jurisdiction over that supreme international crime.

75. Despite his country's reservations concerning the Statute, it was a step in the right direction. He hoped that those who did not currently feel that they could be party to it would continue to make their constructive contribution to the process of improving it, particularly in view of the importance of sustaining and developing the broad partnership which had resulted from the endeavour to make the Court a reality.

76. **Ms. Royo** (Panama), speaking on behalf of the members of the Rio Group, said that they were pleased that the international community would finally have an international criminal court. The Statute adopted in Rome stated that it was the duty of every State to exercise its criminal jurisdiction over those responsible for the crimes defined in the Statute. The objective of the International Criminal Court was to put an end to impunity, and its creation had demonstrated the willingness of the international community to investigate international crimes and punish their perpetrators. Although the Court was not a human rights court, its establishment would help protect human rights and strengthen the rule of law.

77. The Rome Statute was not perfect, and some of the members of the Rio Group would certainly have preferred different solutions to some important issues; nevertheless, they recognized that the Statute was the result of complex diplomatic negotiations aimed at finding a balance between national aspirations and the need to achieve universal acceptance.

78. The foundations for the Court had been laid, but much remained to be done before it would be operational. The members of the Rio Group were prepared to play an active role in the work of the Preparatory Commission, and would be particularly interested in the deliberations on the Rules of Procedure and Evidence. They hoped that the resolution to be adopted by the Sixth Committee would enable the Preparatory Commission to meet as soon as possible, and would provide for sufficient time and resources to be assigned to the Commission to enable it to fulfill its mandate by June 2000.

79. **Mr. Caflisch** (Observer for Switzerland) said that, as a result of the conflicts in the former Yugoslavia and Rwanda, the international community had fully realized the consequences of the impunity of individuals for acts of genocide, crimes against humanity and war crimes, consequences which also affected the prevention of such crimes.

80. From the outset, Switzerland had actively participated in the work leading to the adoption of the Rome Statute of the International Criminal Court and had been among the first signatories of the new instrument, as it believed that individuals should both enjoy rights and have obligations. Although the Court would offer a mechanism that punished war crimes more efficiently than in the past, his Government would have preferred a more complete list of war crimes that

was more easily amendable, as well as a system of automatic or inherent jurisdiction enabling the Court to adjudicate a case as soon as the State detaining the suspect became a party to the Statute. It would also have preferred more flexibility in the criteria governing the choice of judges and more precision in the definition of penalties in order to conform more fully with the principle of legality (*nulla poena sine lege*).

81. On the positive side, the new Court would be permanent, thus allowing for the development of a consistent and uniform case law. Secondly, the Court's jurisdiction would be automatic, rather than dependent on the specific agreement of the State or States concerned. Thirdly, the future Court would be assisted by a prosecutor who could act *proprio motu* in matters of inquiries and prosecution, thus strengthening the independence of the new organism. Fourthly and importantly, in keeping with the principle of complementarity, the Court would not replace national jurisdictions. A final positive point was the legislative aspect of the Rome Statute, which included general rules of substantive criminal law, procedural rules, particularly to protect witnesses and victims, and articles governing cooperation between States Parties and the new Court, without which the latter would be prevented from playing its full role.

82. Having thus welcomed the adoption of the Rome Statute, which was one of the most significant developments of international law in the past 25 years, his Government intended to ratify it as soon as possible and hoped that other members of the international community would do likewise in order to give it the required efficiency and stature. He hoped that the Preparatory Commission would commence work immediately. His Government intended to participate actively in the Commission's discussion relating to paragraph 9 of resolution F (elements of crime) and submit relevant proposals. It was also due to start preparing domestic legislation with a view to ensuring that the Court was fully operational on the very day of its constitution.

83. In view of the nature of the functions entrusted to the new Court, States should act without delay; the true value of the results achieved in Rome would be measured against the way in which they were implemented, which depended on the political will of States. In that connection, he urged States to seize the opportunity offered by the work accomplished in Rome.

The meeting rose at 12.35 p.m.